S. HRG. 98-1071

MEDIA ELECTION PROJECTIONS

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON

H. Con. Res. 321

EXPRESSING THE SENSE OF THE CONGRESS WITH RESPECT TO THE ADVERSE IMPACT OF EARLY PROJECTIONS OF ELECTION RESULTS BY THE NEWS MEDIA

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MEDIA ELECTION PROJECTIONS

THURSDAY, AUGUST 2, 1984

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The committee met, pursuant to notice, at 9:30 a.m., in room SR-253, Russell Senate Office Building, Hon. Bob Packwood (chairman of the committee) presiding.

Staff members assigned to this hearing: Dan Phythyon, staff counsel and Thomas Cohen, minority staff counsel.

OPENING STATEMENT BY THE CHAIRMAN

The CHAIRMAN. The hearing will come to order, please. Today we are considering a subject that is of great concern to the Nation, especially to those of us in the West. Sitting with me here are Senator Gorton from Washington and Senator Stevens from Alaska, and all of us have been subject to the complaints of our constituents on early projection of election returns from the East.

There are two separate issues here. One is, what about the projections of returns from the East when the polls have closed? It's 8 o'clock eastern time in Vermont, it's 8 o'clock in New York. The polls are closed, and at that stage the networks make projections about results in those States.

The second issue is, can anything be done or any encouragement be made to the networks and others that they should not project results based on exit polls, not upon actual election results but upon exit polls? The argument will be made that currently there are no projections until the polls have closed in the East. But there is nothing that would prevent anyone from projecting election results based upon exit polls at 2 or 3 or 4 o'clock in the afternoon. That is a genuine fear in the West.

Arguments can be made pro and con whether early projections of returns hurt voter turnout in the West. I have read until I am blue in the face arguments on both sides whether or not it hurts or it helps. Arguments will be made that if the projections from the East indicate that the race is very, very close that might increase turnout in the West more than expected.

I am not sure today's hearing can answer the question whether or not early projections increase or decrease voter turnout. In a democracy, however, perception is very important, and at least in the West voters perceive that somehow, some way, they are being dealt with unfairly by the projection of results from the East.

Senator Gorton.

OPENING STATEMENT BY SENATOR GORTON

Senator GORTON. Thank you, Mr. Chairman.

I share your interest in this subject and of course share the interest of Congressman Swift from my own State, who was the sponsor and chief promoter of this resolution in the House of Representatives. You are absolutely correct in noting that three of us here are from Western States, which are particularly and adversely affected, both by election projections that take place before the polls close and by exit polling.

The secretary of state of the State of Washington, Ralph Munro, met with the networks and asked for voluntary restraints on exit polling in the State of Washington. Their response to that was negative. He succeeded in having the legislature ban exit polling in the State of Washington within 300 feet of the polls because of serious and widespread objections to the practice, both by voters and by election workers, during the course of the 1980 election.

That law has been challenged by the networks. At this point it has been upheld through the U.S. district court in the State of Washington, which I think is a significant decision.

As we deal with these questions from a constitutional perspective, it is important to point out, of course, that in whatever form this resolution began, it is now a request on the part of Congress. It is a sense of Congress resolution that activities which do impact or at the very least are perceived to have a negative impact on turnout and perhaps occasionally even do influence the way in which people actually cast their votes be dealt with affirmatively and appropriately on the part of the television networks.

We are now just a few months from an election. I predict without any hesitancy that we will have the same kind of negative public reaction to early projections and to the use of exit polling.

I sincerely submit to the networks, as you do, whatever they claim their constitutional rights to be, that they exercise restraint in November and contribute to as large a turnout as possible and to an election which is not influenced by predictions of its outcome before it is over.

The CHAIRMAN. Senator Stevens.

OPENING STATEMENT BY SENATOR STEVENS

Senator STEVENS. Thank you very much, Mr. Chairman.

Some 8 years ago the Senate passed a bill of mine that would set up a uniform time for polls to open and close throughout the Nation. Four years later, Senator Hayakawa had the same bill. The bill the Senate passed 8 years ago stalled in the House.

I think that there are two separate issues here. One is the question of exit polls and the other is the question of the official closing time of polls so that there would not be premature releases from the East that affect the turnout in the West.

I am convinced it does affect the turnout. It affects the participation in Western States, particularly the offshore States of Alaska and Hawaii. When you can turn on the morning news and find a projection based upon New England States that indicates the election is over, it certainly deters you from going out and shoveling

the snow away from the car in order to go to the polling place. Now, that is all there is to it.

The other fact is that elections in Western States are impacted. Elections on bond issues, the State elections, the local elections. More than anything else, I would call your attention to the number of Western States that were cited under the Civil Rights Act for low turnout, low voter participation, which is a presumptive case of discrimination under the Civil Rights Act.

My State is still trying to get out from underneath that presumption. The total case against Alaska is based upon voter turnout, not upon any assertion of discrimination.

I think this is a very complex subject and I hope that the networks will at least cooperate as far as this resolution is concerned. I don't think the resolution goes far enough, but it is a good start. And I would hope that the Senate would pass it.

[The resolution follows:]

[H. Con. Res. 321, 98th Cong. 2d Sess.]

Concurrent resolution expressing the sense of the Congress with respect to the adverse impact of early projections of election results by the news media

Resolved by the House of Representatives (the Senate concurring), That the Congress finds that—

(1) in the 1980 and 1982 general elections, broadcasters made projections of election results in many States while polls were still open;

(2) those projections may have decreased voter participation and affected close elections;

(3) early projections of election results undermine the belief of individuals in the importance of their votes—a belief that is essential in a democratic society;

(4) rapidly developing technology makes it possible that projections of election results will be made earlier and in more elections, especially in States with more than one poll closing time (which States might consider adopting a single closing time);

(5) if projections of election results are based on exit interviews and the news media do not voluntarily refrain from making those projections before the polls close, then a uniform closing time will not solve this problem; and

(6) with the approach of the 1984 election, there is continued concern about the impact of early projections of election results on the electoral process.

SEC. 2. In light of the findings set forth in the first section of this resolution, it is the sense of the Congress that, to maintain the appropriate balance between freedom of the press and the integrity of the electoral process, in future elections—

(1) broadcasters and other members of the news media should voluntarily refrain from characterizing or projecting results of an election before all polls for the office have closed; and

(2) the news media, including industry, trade, and professional organizations, should adopt guidelines to assure that data from exit interviews are not used to characterize or project results of an election before all polls for the office have closed.

Passed the House of Representatives June 26, 1984.

The CHAIRMAN. We will operate today under the normal time constraints of this committee as far as witnesses' testimony are concerned. Testimony will be placed in the record in its entirety and we would appreciate it if you will abbreviate your oral remarks so that we will have time for questions.

We will start this morning with our first witness, Hon. David Markey, the Assistant Secretary of the National Telecommunications and Information Administration.

STATEMENT OF DAVID J. MARKEY, ASSISTANT SECRETARY, NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION, DEPARTMENT OF COMMERCE

Mr. MARKEY. Thank you, Mr. Chairman.

Let me try to summarize my testimony. We certainly appreciate the opportunity to comment briefly on House Concurrent Resolution 321. While the Reagan administration at this point has no position on whether this legislation should be passed, let me hasten to add in this regard that we certainly share many of the legitimate concerns which have prompted this proposed resolution.

We have provided a graph that shows the declining participation in Federal elections. These Commerce Department statistics indicate that, until quite recently, we were losing about 2 percent of the eligible voters each election cycle. In other words, despite population increases, the percentage of the voting age population participating in the political process dropped by about 2 percent each Presidential election.

[Votes cast in thousands]

Year	Voting population	President	Percent	Congressional	Percent
1970	124,498			54,173	43.5
1972	140,777	77,719	55.2	71,430	50.7
1974	146,338			52,495	35.9
1976	152,308	81,556	53.5	74,442	48.9
1978	158,369			55,332	34.9
1980	164,381	86,515	52.6	77,995	47.4
1982	169,342			64,514	[1] 38.1

[1] 1984 U.S. Statistical Abstract 263.

Political scientists and professional pollsters have given any number of explanations why this is so. I do not think we have any good explanation. In fact, it seems to us a little bit of a paradox that at the same time overall education levels are rising, and the issues and choices confronting the American public are increasing in perceived importance, that the percentage of the voting age population that seems to be exercising its right to vote is going down.

We certainly do not believe that this trend can be completely attributed to the broadcast or any other news media. Indeed, if anything, the generally excellent coverage of news and public affairs by the three commercial networks, the Public Broadcasting Service, and new networks such as the Cable News Network contributes to a better informed electorate, and it really should encourage greater participation in the political process.

But the information that has come to our attention, as it has come to your attention, does seem to corroborate the view that the practice of airing early election returns, coupled with election projections based on exit polling, has contributed to discouraging some in the electorate from voting.

We do not believe anyone can say with authority precisely how much these broadcast practices have contributed to a decline, but we do think that most agree that there has been some relationship

between the election projections aired before polls close and lower voter turnout.

This administration believes strongly that there is a clear public interest in encouraging all eligible citizens to vote. Voting obviously is a principal cornerstone of our democratic system, and we should encourage people to find ways to vote and we should discourage any activities that have the effect of driving people away from the voting booths.

What is really needed here in our judgment is the prudent exercise of reasonable discretion on the part of electronic journalists. No one, least of all this administration, wants to infringe upon broadcasters first amendment rights. I think you will recall in that regard, Mr. Chairman, that just this past April we have voiced support for your legislation to confirm the first amendment rights of broadcasters, to ensure a greater parity of safeguards for all media. By the same token, we do want to see action taken to curtail anything which undermines the efforts to encourage greater exercise by Americans of their right to vote.

Since the hearings held by the House Telecommunications Subcommittee this past spring, I think I've noticed at least some evidence of change on the part of the national broadcast news organizations. I think there are indications that the networks, for example, fully appreciate the concerns that have been raised regarding exit polling and premature election results or from projections.

Voluntary action by news media professionals, it seems to us, is far preferable to any Government measure. While the resolution the committee is considering does call for voluntary steps, some have expressed concerns that the passage of even a nonbinding resolution might have some intimidating effect on news coverage.

In conclusion, our major interest is in making sure that people vote. We would very much like to see an upward change in those downward voting statistics that I mentioned earlier. Curtailing exit polls, and particularly early election projections, is not by itself going to reverse the trend which has emerged and persisted over the last decade, but it may contribute toward a solution and lessen some of the problems.

Ideally, all the news media could take voluntary action here, and I know, for instance, as I think the committee has noted, that Westinghouse Broadcasting and the Turner Broadcasting System and the Cable News Network have already gone on record as supporting voluntary restraints. We would like to see other industry leaders adopt a similar, commendable approach.

Mr. Chairman, the administration is sensitive to the concerns that are reflected in House Concurrent Resolution 321, but we are not yet persuaded that further congressional action is needed. However, we will closely monitor the testimony of the witnesses here and the general tenor of the comments, and that may well have an impact on our determination as to whether this resolution should go forward.

We hope these hearings, as well as those held recently in the House, will eventually persuade the electronic news media of the need to take remedial steps. In our view, the preferable course at this time is to rely on voluntary self-restraint and to avoid direct action by the Congress or other branches of Government.

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I will be happy to answer any questions you may have, sir.

The CHAIRMAN. Dave, thank you.

Following the normal rule of first come, first question, we will start with Ted Stevens.

Senator STEVENS. I am anxious to hear the people that come behind you, so I am not going to ask any questions.

The CHAIRMAN. Dave, to the best of your knowledge how does the Canadian system work, where their laws prohibit the broadcasting of results until the polls are closed in the West?

Mr. MARKEY. Well, as you pointed out, they have by law—they have prohibited the disclosure of results before the polls are closed in the western provinces. And it is my understanding that they feel that has been very beneficial.

Again, I do not know the constitutional situation in Canada, whether it is applicable to our situation, whether our constitutional provisions are anywhere near similar to theirs. But obviously they felt it was a very serious problem, and they took some action to deal with that problem.

The CHAIRMAN. Realizing that you have no position on the resolution if we were to send it out, do you have any suggested changes?

Mr. MARKEY. The only suggested change, I think is that at one point in the legislation it talks about exit polls and that the poll results are not to be used before the polls are closed. There are some very legitimate uses of exit polls, of course, and I think what probably would be better is to say that they are not to be publicly used before the polls close.

So other than that one change, I do not know that we have any other serious problems.

The CHAIRMAN. You, for example, have no complaint about political parties conducting exit polling and saying, oh my God, we're not doing too well and we better get the troops out? That is a perfectly legitimate private use.

Mr. MARKEY. Absolutely. I certainly do not have any objection to the networks or anybody else doing exit polling. It is just the use of those polls, particularly in the West. As Senator Stevens knows, I once worked for a Member of the Senate from Alaska and I know the situation up there, and it is very difficult.

The people come out of their homes and they are told that their State has already voted for a certain candidate. That has got to discourage you.

The CHAIRMAN. Well, in 1980, you will recall that President Carter conceded relatively early, over 1 hour before the polls were closed in the West. And we had at least two close races, one in Oregon, where former Congressman Ullman was defeated by a very, very slight margin. In Idaho, Senator Church was defeated by Senator Symms by a very, very slight margin.

Would it have made any difference? Those who did not vote, would they have been voters for Ullman or Church? Who knows? It is hard to tell. But clearly there is a perception, and I am sure a perception especially on the part of those who lost, that the early announcement of the President, let alone the early projection of the poll, results was a deterrent.

Mr. MARKEY. Well, absolutely. And I recall the Oregon situation very well, because at that point I was representing the broadcasters, strangely enough, and I was out speaking to an Oregon Association of Broadcasters right after the election. There was an awful lot of concern among the broadcasters, as well as the general public.

So it came home to me then that this was a problem that we had to try to find some way to deal with.

The CHAIRMAN. Slade?

Senator GORTON. No questions, Mr. Chairman.

The CHAIRMAN. No other questions, Dave. Thank you.

Mr. MARKEY. I appreciate it.

The CHAIRMAN. Next we will take our first panel: E. Mark Braden, chief counsel of the Republican National Committee; and Ronald H. Brown, the deputy chair of the Democratic National Committee.

Do you have any objection to going in that order, taking Mr. Braden first?

STATEMENT OF E. MARK BRADEN, CHIEF COUNSEL, REPUBLICAN NATIONAL COMMITTEE

Mr. BRADEN. I am concerned that I am sitting on his left side.

First, I want to thank the chairman and the members of the committee for the invitation to testify, and I want to apologize for Frank Fahrenkopf's inability to attend. As I am sure you are aware, we are only a few days away from the convention and so he is in Dallas making sure everybody's room is made up and the beds are all turned down.

I do not believe his absence, though, indicates any lack of interest in this issue. In fact, in February of this year he submitted testimony to the House Subcommittee on Telecommunications on the subject of early network projections.

Perhaps my view and his view of early projections of elections by the media can be best expressed in the language of the House committee: "When something serves no useful societal purpose and when it may cause some societal harm, it should not be done."

I think we all agree that the low turnout of eligible Americans to vote in the elections is a problem. In comparison to other Western democracies, our turnout is depressingly low. There is a variety of historical, cultural, and structural, reasons posed as to why American voters turn out in lower numbers than in other countries. Which of those factors are true and which are not is the subject of a lot of debate, which I am sure all the members of this panel have heard.

I believe, and I think you share my opinion and I believe Ron probably does, too, that one of the reasons probably is the projection of election results prior to the closing of polls in certain sections of the country and exit polling results projecting victors.

I do not want to indicate that I believe that early projections of elections is the major factor in declining voter participation, but they do contribute, in my opinion, to some decline in voter participation, and there is a variety of studies and observations of election

officials across the Nation that confirm this. The degree is unclear, but the effect I think is clear.

I can perceive of no useful societal purpose served by the early projection of election results. I have not heard anyone even make an argument that early projections of victors serve a useful function. Maybe the societal benefit is that we may all begin a victory celebration or the electoral wake earlier.

If a societal benefit exists, it has been kept a secret from me. The only pro argument that has been brought to my attention is that the journalists feel that their ethics require the disclosure of any information they have as news to the public. They argue that it would be patronizing for them to withhold information from the public.

And, of course, this argument flies in the face of the reality of the function of journalists presently. The networks regularly, if not daily, determine what stories appear and what stories do not, which regular programming to interrupt and which regular programming not to interrupt to present information.

I think that their interest in being first is the greater demand than their interest in the public interest in this area. Their projections become the news, not the actual actions of the electorate.

As you know, just because a societal harm exists does not mean that a legislative solution is present. Many of the legislative solutions in my opinion would be much worse; the cures would be much worse than the disease.

Prior to becoming counsel to the Republican National Committee, I was director of elections in the State of Ohio. The Ohio system, as in most States, is operated in large measure by individuals receiving modest pay for already quite long hours. Many of these individuals are retired and older Americans who view their role as poll workers or elections judges not as a job but as a civic duty. Twenty-four hour polling places or a uniform poll closing system would place an intolerable burden on this quasi-volunteer system. It would escalate costs enormously.

Also, I believe that any legislative ban on early projections would undoubtedly be unconstitutional. My brethren lawyers have been very successful at fashioning ingenuity-based arguments on why this could be done, but I do not believe the Supreme Court would buy any of those arguments.

I believe the solution in the House resolution makes the most sense: Good judgment and restraint. I think there is nothing wrong with the Congress asking the press to show some judgment and show some restraint and simply not take an action that benefits society in no way and may harm a goal of increasing participation.

The CHAIRMAN. Of course, basically all the House resolution does is express the sense of the Congress, and it urges them to exercise restraint. It is not any attempt to pass a law. The issue that is raised about the first amendment is a valid issue. My hunch is if we said you cannot broadcast election returns or make early projections, then we would clearly run afoul, of the first amendment.

[The statement follows:]

STATEMENT OF E. MARK BRADEN, CHIEF COUNSEL, REPUBLICAN NATIONAL COMMITTEE

I want to thank Chairman Packwood and the members of the Senate Committee on Energy and Commerce for this opportunity to testify. Additionally, I wish to transmit Chairman Frank Fahrenkopf's sincere regrets at beging unable to attend and to personally testify this morning. As you are aware, only a few short days separate us from the 1984 Republican National Convention in Dallas, and its demands require that Chairman Fahrenkopf be away from Washington. Please do not believe that his absence indicates a lack of interest in this issue. In February of this year, he submitted testimony to the House Subcommittee on Telecommunications on the subject of early network election projections.

Perhaps my view concerning early projections of election results by the media can be best expressed in the language of the report of the House Committee on this matter. "When something serves no useful societal purpose and when it may cause some societal harm, it should not be done."

I think we will all agree that the low turnout of eligible Americans to vote in our elections is a problem. In comparison to other western democracies, our electorate's participation is depressingly low. There are many historical, structural and cultural reasons posed as to why American voters turn out at a lower rate than in most other democracies. Many of the factors leading to the low level of voter participation are not easily identified or changed. If we can identify a factor which contributes to the lower participation among the electorate and it can be changed without detrimental consequences or costs, action should be initiated.

I do not want to indicate that I believe the early projections of election returns by the media are a major factor in declining voter participation, but early projections do contribute in some degree to a decline in voter participation. The effects are difficult to quantify, but projections do have a detrimental impact. This is recognized through observations of many election officials in our western states and in a number of studies. As an example, a study of the 1972 election by Raymond Wolfinger and Peter Linquiti indicated an approximate 2.7% drop in turnout in the west as a result of early network projections of the Nixon landslide.

There may be a dispute over the methodology of various studies on this issue. The degree of the impact of an early winner projection is not clear, but there is in my mind no legitimate question that it does depress the voter turnout. Since early projections cause a decrease in voter turnout, which the members of this committee, the Republican National Committee, and I am sure the Democratic National Committee, believe to be a societal harm, one must ask whether early projections serve a useful societal purpose which may countervail the harm.

I can perceive of no useful societal purpose served by the early projection of electoral results. I have not heard anyone ever make an argument that the early projection of victors by the television networks serves a useful function. Maybe the societal benefit is that we may all begin the victory celebration or the electoral wake earlier? If a societal benefit exists, it has been kept a secret from me. The only pro-argument which has come to my attention is that the networks feel their journalistic ethics require the disclosure of any information that they have as "news" to the public. They argue that they would be patronizing their audience if they were to determine what information to provide and what information to withhold.

Of course, this argument flies in the face of reality. The editors of the evening news make journalistic determinations as to which stories to present and which ones not to present everyday. The networks regularly determine whether or not a news story warrants the interruption of the regular programming for an accelerated dissemination to the public. The journalistic passion for race horse political coverage demands the projection of victories. Their projections become the news, not the actual tabulation of the electorate's actions.

As this committee knows, just because a societal harm can be recognized does not mean that a legislative solution exists. Many of the legislative solutions offered would be a cure much worse than the disease. Prior to becoming Counsel at the Republican National Committee, I was Director of Elections in the State of Ohio. The Ohio election system, as in most states, is operated in a large measure by individuals receiving modest pay for already quite long hours. Many of these individuals are retired and older Americans who view their role as poll workers or election judges not as a job but as a civic duty. Twenty-four hour polling places or a uniform poll closing system, would be an intolerable burden on this quasi-volunteer system. It would escalate cost enormously to the municipality charged with administering elections. Additionally, it would be a tremendous burden on campagins and their poll watchers and on any ballot integrity programs.

Any legislative ban on early projections would, in my opinion, and I think in the opinion of most attorneys, clearly run afoul of the First Amendment. My professional brethren have, on many occasions, exhibited remarkable ingenuity, but I doubt that any argument, no matter how ingenious, can be fashioned that would convince the Supreme Court that this type of prior restraint of the press was not a violation of the First Amendment.

If there is a solution, it rests in voluntary restraints and the good judgment of the editors and executives of our major news organizations. I believe that H. Con. Res. 321 is a reasonable response by Congress to the problem, and I support its passage. I hope network editors and executives will heed its request to exercise restraint and to realize that their responsibility as journalists is not the responsibility of a track announcer. Every day they make decisions as to what to report and when to report it. It benefits society in no way to report results or to project a victory prior to the closing of the polls. It does harm a legitimate interest of society, the fuller participation of Americans in our democratic system.

Thank you.

The CHAIRMAN. Mr. Brown.

STATEMENT OF RONALD H. BROWN, DEPUTY CHAIR, DEMOCRATIC NATIONAL COMMITTEE

Mr. BROWN. Thank you. Senator Packwood, Mr. Chairman, and members of the committee, my name is Ronald H. Brown and I am a partner in the Washington law firm of Patton, Boggs & Blow, but I am here today in my capacity as deputy chairman of the Democratic National Committee. I am also pleased to be making history and that is for the two major political parties of our country to be agreeing on a subject in between convention time, and I think the record ought to take note of that.

As the Nation debates the impact of new technologies on the lives of the American people, we have in my view created a new victim, an American citizen who in effect loses his right, or at least the impact, of his vote by an accident of time zones.

Technology in all its wizardry has joined with our free enterprise system to create what is clearly a phenomenon of election night hysteria, and the consequences are grim: the disenfranchisement of a major portion of the American people. In the haste to be first, in the rush to merge fact and speculation, one of the most fundamental elements of a free republic has come to have little, and in fact for some no, meaning because telecommunications has made the issue moot.

As deputy chairman of the Democratic National Committee and chairman of our party's Task Force on Voter Participation, I have spent numerous hours studying actions and impediments which are disincentives to those who seek to fashion the future of our Nation by their participation in the political process. We have worked with Members of the Senate and the House and many others interested in the political process in identifying barriers to voter participation.

To quote from the testimony of Representative Don Edwards before our task force as he discussed voter turnout in 1980 dropping to its lowest level since 1984. He suggested:

One cause was these elections projections that are made on election day by broadcasters. In 1952, it took four weeks for the results of the presidential election to be known. In 1980 it [happened] four-and-a-half hours before the polls closed in California.

Clearly these early projections contribute to voter decline, the Congressman continued—

> People are told "your vote really doesn't count," and they are turned away. Three percent of the voters in the West said they didn't vote because of the early projection by the broadcasters. That is 400,000 Californians who didn't vote just for that particular reason.

Polling data which our task force reviewed and received substantiated that fully 74 percent of voters in 1980 in a nationwide poll favored prohibition of election projections until the polls closed in all of the States.

Voter participation is, as we all know, crucial to the democratic process. It has distinguished this Nation as a democracy. It has given citizens a voice in their future, voices which are in effect silenced when projections obliterate the real or projected viability of a candidate.

In the November 1983, issue of the University of Michigan's American Journal of Political Science, John E. Jackson cited statistics which support the contention that not only did early projections discourage voters not to cast their ballots for President of the United States, voters did not vote for other State and local races which were also decided in that election.

Through the work of our task force, we sought to balance our respect for the rights of a free press, guaranteed by the first amendment to the Constitution, with the rights of voters, a principle which stands at the base of our democratic foundation and which too is protected by our Constitution.

After significant discussion and lengthy testimony, the Democratic National Committee in 1984 adopted a resolution calling for voluntary restraint by the networks on the question of election projections. Yet, we come to these chambers this morning following the conclusion of one of the most aggressively contested primary and caucus seasons in the history of the Democratic Party, haunted with the recurring inequities that this phenomenon produces.

During the week of Iowa caucuses in February of this year, we saw two major television networks proclaim the results of those caucuses before one single Iowa voter had the opportunity to express a Presidential preference.

The CHAIRMAN. Let me ask you something, because I want to make sure I understand what you are saying. Two of the networks projected the results of the Iowa caucus prior to the caucuses even starting to meet?

Mr. BROWN. That is correct.

The CHAIRMAN. So nobody voted at all. This was not a question of exit polling.

Mr. BROWN. That is correct. It is a question of data that was received from those who were potential participants in the caucuses.

Such reporting makes a mockery of our efforts to reach, to inform, and to motivate Americans to vote. It turns the election of the President of the United States into an electronic horse race, weakening the rights of every American to make a meaningful choice.

The Democratic Party believes that the people of this Nation deserve better. Our system of government requires a higher standard of responsibility from the news media. Voluntary restraint by the

networks until all the polls close would hide no information, censor no fact, destroy no one's right to know.

It would preserve and protect the most basic right of all, the right of all Americans to choose their own Government, to cast their own votes in privacy, with full confidence in a fair system, influenced only by their individual consciences.

We thank you very much, Mr. Chairman and members of this subcommittee, for your concern and interest in this vital matter. It is our hope that a positive solution can be fashioned immediately, certainly before this upcoming important election.

The CHAIRMAN. Mr. Brown, can you remember which two networks in Iowa made their projections prior to 8 o'clock?

Mr. BROWN. Offhand, I cannot.

The CHAIRMAN. Well, if you can find out before you leave I would appreciate it. The networks are testifying later, and I want to quiz them on this. They were projecting before 8 o'clock, before the caucuses actually had come together?

Mr. BROWN. That is correct.

The CHAIRMAN. I have no other questions. Slade?

Senator GORTON. No questions.

The CHAIRMAN. Fritz?

Senator HOLLINGS. No questions. Thank you very much, Mr. Brown.

The CHAIRMAN. Jack?

Senator DANFORTH. No questions, Mr. Chairman.

The CHAIRMAN. Next we will have a panel with the Honorable Norma Paulus, secretary of state of the State of Oregon; the Honorable Mike O'Pake, State senator, State of Pennsylvania; and Ms. Julia Holmes, legislative action chair for the League of Women Voters. We will take the panel in the order I just listed.

I might say in introducing Norma Paulus that she is a friend of long-standing. She was the secretary to the chief justice of the Oregon supreme court in the mid-fifties, when I was clerking for one of the justices.

The Willamette University Law School was right across the street and she was going to law school full-time during the day, because they had no night law school, at the same time that she was acting as the secretary for the chief justice. And she came out of law school with exemplary grades, practiced law for a number of years, served in our legislature, and is now finishing out the last of her two constitutional terms that she is allowed to serve as secretary of state.

She stopped in my office a little earlier today and said, if her testimony was a bit blurred, it is because last night in her hotel room her smoke alarm kept going off all night.

Norma.

STATEMENT OF NORMA PAULUS, SECRETARY OF STATE OF OREGON

Ms. PAULUS. Thank you, Senator.

For the record, my name is Norma Paulus and I am secretary of state of Oregon and have served in that capacity for 7½ years.

Briefly, I can only give you my opinions based upon my political knowledge and being very closely associated with the election process. That is one of my jobs as secretary of state, is to be the chief elections officer of the State of Oregon.

And I can tell you without equivocation that in the 7½ years in that capacity, there is nothing that created the uproar or storm of protest from our citizens as did the early projection of President Reagan's win in 1980. And unlike a lot of flaps that come about in the political world or the election world, this one was very lingering. It stayed with us for months after it occurred.

We had hundreds of letters protesting early projections and many, many irate calls. And indeed, now that interest is picking up again about the election in November, our office is once again being asked by our citizens if anything has been done to preclude that same thing happening.

Oregon has led the Nation in election reform and, indeed, we always have a very high turnout in Presidential elections, and in 1980 I think our percentage was about 72 percent, and if it was not the highest in the Nation it was very close to it.

But still, we had reports, which were verified by our county clerks and election board members, that when, about 5:15, NBC came into our State and projected Reagan as the winner, that people standing in line, essentially the lunch bucket vote, which the conventional wisdom in politics is that that is Democratic, and I believe it to be so in our State in the urban areas, that people left the polls in droves.

In our State it is also possible to register on election day up to and including 8 o'clock when the polls close. And we had reports from all of our urban clerks as to people standing in line to register left also, and many reports of disk jockeys on the radio stations that people driving from work to the polls turned around in disgust.

So it did have an effect in my opinion on the outcome of not only the percentage, but in particular races. I believe that one of the networks, in response to the furor, indicated that on the outside the dropoff would have been 2.7 by their statistical sampling afterwards. Al Ullman lost by a little less than 3 percent. Senator Frank Church lost by less than 1 percent.

We had seven measures, money measures, school district measures, very important monetary issues, on the ballot. Seven of them lost by less than 10 votes, 3 of them lost by only 1 vote.

So while we cannot prove it in numbers, the onsite reports by our clerks, what we witnessed ourselves and the calls from our citizens do indicate that it did have an effect. The legislative district which I represented when I was in the legislature and I still live in had a candidate of a very progressive young black who lost a race to an incumbent by 59 votes, and the smart money in Oregon says he lost because of the early projection, that the Democratic votes that would have come in—and I think that is true because the next time he ran he won overwhelmingly.

After this happened, because of the outcry in our State, Senator Hatfield introduced, partially at our request, a bill which would have put the burden on election officials to withhold information, and I think that is similar to what happens in Canada. We arrived

at that solution or probable solution because as a lawyer I was worried about first amendment problems, as you have stated, in trying to prohibit the stations by statute from doing that.

Now, we have that situation in Oregon, we are in two time zones. And a lot of people do not think about it, but of course Malheur County is in a different time zone and the election people just withhold the information, and we have never had any problem with it.

I do not know that that would work, given the many time zones that Alaska and Hawaii and the west coast are faced with, and it might strain the integrity of the process by asking people in the East, and particularly in Chicago, to keep——

The CHAIRMAN. Do you mean you would let them have those ballots for an additional 12 or 13 hours?

Ms. PAULUS. But the Swift resolution I think would be a very appropriate response.

Thank you.

The CHAIRMAN. Thank you.

[The statement follows:]

STATEMENT OF NORMA PAULUS, SECRETARY OF STATE, STATE OF OREGON

I am here today to speak in support of House Concurrent Resolution 321, the Swift Resolution. I believe that the projection by the news media of election night voting results while our citizens are still voting serves no positive purpose in the election process. Rather, this early reporing only discourages voter participation. I am hopeful that a voluntary effort by the news media to refrain from characterizing or projecting election results before the polls close will solve the problem.

Following the 1980 general election, my office received hundreds of telephone calls and letters from citizens complaining about the early projection of voting results for the presidential election. As a result, I asked U.S. Senator Mark Hatfield to seek federal legislation that would prohibit election officers throughout the nation from releasing election results until all polling places have closed.

Further, the Sixty-first Legislative Assembly of the State of Oregon passed House Joint Memorial 2 expressing a concern regarding the effect in the West of the early release of the Eastern vote totals. The Memorial urges the Congress of the United States to "enact legislation that will minimize the impact of presidential election results * * * but will not discourage any citizen from exercising one of the most precious rights of an American: The right to vote."

Our proposal to place restrictions on election officers was chosen over two other alternatives. One possible solution would be to provide for media blackouts in areas with polling places still open. This idea was rejected on the basis that it would conflict with First Amendment guarantees.

The other possibility considered was the establishment of uniform polling hours throughout the country, with all polling places closing at the same time. However, past experience indicates that earlier or later openings and closings of polling places have a tendency to disfranchise certain elements of the voting population; i.e., a 6:00 p.m. closing would place a hardship on workers leaving work at 5:00 p.m.

Four years later, the subject of early release of election results is still a matter of concern. While the early release of results in 1980 clearly did not affect the race for president and vice president, there is no doubt in my mind that local races, and even races for federal offices, were significantly affected.

In Oregon alone, seven special district budget measures passed or failed by less than 10 votes. In three of these the difference was a single vote. In a state representative race, the incumbent held off a strong effort to unseat him by only 59 votes out of nearly 22,500 cast.

Congressman Al Ullman was defeated by then challenger Denny Smith by less than two percent of the 279,943 votes cast for two candidates. In the State of Idaho, Senator Frank Church, then chairman of the Senate Foreign Relations Committee, lost his bid for re-election to the Senate by a margin of one percent of the votes cast. Thus, the problem, which might appear to have an impact only in the western states, reaches all the way to the federal level when one considers the resultant power shift when two influential members of Congress are defeated.

In my opinion, the election results in the instances cited above were most certainly affected by a significant drop in participation after the early announcement in 1980. Election officials throughout the state saw persons walk away from the polls without voting, upon learning of the projected presidential election results. Consider the outcome of those elections in the face of estimates of as high as a two percent drop in participaiton.

Other suggestions that have been offered as possible solutions to the problems are Sunday voting, 24-hour polling times, and voting over a two-day period. Sunday voting has historically produced dismal voter turnouts. The other two alternatives are fraught with problems such as ballot security, increased expense, and the necessity of finding and training twice the number of election workers.

The only other proposal that would effectively prevent the premature release of results, as well as increase turnout and keep costs down, is that of holding elections exclusively by mail. We have conducted a three-year pilot project in Oregon during which we have conducted nearly 40 elections by mail. The results have been phenomenal. However, to think of conducting nationwide elections by mail at this time would be premature at best. We must look instead to an immediate solution that will guarantee that all votes will carry the same weight, regardless of where they are cast.

The CHAIRMAN. Senator O'Pake.

STATEMENT OF MIKE O'PAKE, STATE SENATOR FROM PENNSYLVANIA

Mr. O'PAKE. For the record, I am Senator Michael O'Pake from Pennsylvania and the ranking Democrat on the Senate Judiciary Committee of Pennsylvania and the author of proposed State legislation that would regulate exit polling at the polling place.

I am not going to rehash all of the academic arguments. I think it is very clear that the projection of election results before the polls close pollutes the process. I strongly urge prompt adoption of this resolution, which calls on those who seek to pollute to stop and refrain from polluting.

I think it is interesting, I would like to read into the record a very brief statement from our capital newspaper, the Harrisburg Patriot, which says that:

> The broadcasting of projections that designate election winners or suggest leaders is an offensive and presumptuous practice. It tends to demean the election process by suggesting that polling a few hundred voters is just as good as knowing the final tally of thousands of votes, that indeed it is better because projections tell viewers the result of an election before all the votes are cast.

Last week at the National Conference of State Legislators meeting in Boston, a whole morning was spent on the question of the media and elections, and the key issue was exit polling. During the course of that discussion, it was brought out that a recent national poll, ironically, indicates that 79 percent of the people in this country oppose projecting election results before the polls are closed.

I commend this committee and hope the full Senate will follow the House of Representatives and urge the networks to use voluntary restraint. If they do not, then I am concerned that States will have to attempt to deal with the problem on a piecemeal basis.

Of course, States have no jurisdiction over the Federal Communications Commission and anything that deals with the networks. However, States do have the right to regulate the decorum at the ballot box.

Over 30 States are already considering various kinds of legislation. The State of Washington has enacted a State law that prohibits exit polling within 300 feet of the polling place. A Federal court

has sustained that as being constitutional in the balancing of interests.

I would hope—Pennsylvania, by the way, we are having hearings in September on my legislation that would require networks or whoever intends to do exit polling to register 30 days in advance with the elections bureau and notify voters in the areas that they do not have to answer the questions in the form of a paid advertisement.

I would hope that that kind of piecemeal approach is not necessary. Obviously, States can only deal with the function of exit polling. We cannot do anything about the using of the air waves to project election results before the polls are closed.

But I commend this committee. I hope the Senate will act promptly. The integrity of the election process is at issue here. You know, we are only State legislators. Many of our races are decided by 10, or 20, or 30 votes, and even though the networks may try to persuade you that their practice does not affect presidential elections, I do not think anybody can make any credible argument that it does not affect local races.

When a State legislative contest or a State senate contest—and we are on the same ballot as the Presidential ticket—is decided by 10, or 20, or 30 votes, you have to ask yourself, how many stayed home because they thought the ballgame was over?

So from our point of view, from the point of view of State legislators, I urge this Senate to ask the networks to voluntarily restrain and concentrate on news, not projecting winners before the news has happened.

I would just like to close with a quote from an illustrious philosopher by the name of Yogi Berra, and I think network news producers would be wise to remember Yogi's famous words: "It ain't over until it's over." When the news tells how the votes come in, that is when it is news, rather than trying to predict and have the discouraging and depressing effect of having voters stay home because a network wanted to be first.

Thank you for the opportunity to testify.

The CHAIRMAN. Thank you, Senator.

Ms. Holmes.

STATEMENT OF JULIA A. HOLMES, LEGISLATIVE ACTION CHAIR, LEAGUE OF WOMEN VOTERS

Ms. HOLMES. Mr. Chairman, I am truly delighted to be here today to talk about the problems of early projections and characterizations of election results by broadcasters. The League of Women Voters of the United States is a nonpartisan organization. We do not support or oppose candidates for election to public office.

The league urges you to support House Concurrent Resolution 321. We believe that projections and characterizations of election results by the news media before the polls close have an adverse impact on elections and interfere with the constitutional right of every person to vote.

House Concurrent Resolution 321 calls upon broadcasters and other members of the news media to voluntarily refrain from projecting or characterizing the results of an election before all the

polls are closed and to adopt guidelines to assure that data from exit interviews are not used to make early characterizations or projections of election results.

The issue of early projections is one that alarmed many Americans in the 1980 election period and that has continued to occupy a central place in the attention of election observers. Let us review the facts.

In the 1980 Presidential election, the National Broadcasting Co. projected Ronald Reagan the winner of the Presidential election at 8:15 p.m. eastern standard time, fully 2¾ hours before the polls closed in California, Oregon, Washington, Alaska, and Hawaii, and substantially before polls had closed in most States in the mountain time zone. ABC projected the same results at 9:50, and CBS did so at 10:15, both well before the 11 p.m. closing time for the polls in most Western States.

Voters expressed outrage at this early announcement that the election was over before many had even voted. Candidates were also concerned, particularly in close races that could have been affected by those votes not cast after would-be voters saw or heard the early projections.

A Los Angeles Times public opinion poll of registered voters conducted on November 9–13, 1980, found that 71 percent of those surveyed felt that broadcasters should not have announced the projections until polls were closed in all parts of the country. Voters in the Eastern States felt as strongly about this as the voters in the Western States.

An analysis of the 1980 situation by Prof. M.X. Delli Carpini of Rutgers University found that early projections had a measureable effect on voter turnout at both the Presidential and congressional levels, with a greater effect at the congressional level. The effect was found to be present not only in Western areas, but in non-Western areas as well. Further, this researcher argues that the impact of early projections was large enough in some districts to have affected the outcome.

Again in 1982 all three networks made early projections. While the networks stated a policy in 1982 of not projecting results before the polls were closed in individual States, the league and the committee for the study of the American electorate found that the actual practice of the networks did not meet their own stated standard.

One of our most important findings was that all three networks projected results of the elections in States overlapping two time zones and in States where certain polling places were permitted under law to be open longer than others.

These are such States as Michigan, Maine, Florida, North Dakota, Indiana, and Kansas. In all cases, projections were made when the polls had closed in one part of the State but were still open in other parts of the States. All networks engaged in such early projections. A copy of our report on the 1982 election early projections is available for your reference.

In 1984 all three networks made early projections of results for the Iowa Democratic caucus. But perhaps more importantly, the networks and other news organizations developed the technique of

making characterizations of election results before the polls closed. Characterizations were made in at least four primaries or caucuses.

In making characterizations the broadcasters say that "trends are," or that "it looks like" the election will have a certain outcome. Another characterization technique is to say that "indications are," or that "exit polling suggests" how certain blocs of voters are voting. Coupled with a description of how a particular candidate was expected to do with those voters, it is clear to even a casual observer what the broadcaster believes will be the result of the election.

The use of characterizations seems to be the networks' response to public concern about early projections. We believe that characterizations can have negative impact on voter participation similar to those caused by early projections, because the fundamental problem with characterizations and early projections is the same: Broadcasters are telling the public the results of elections before all the voters have had a chance to vote.

We received many letters from distressed voters after the 1980 election, but none perhaps so well worded as the following from a local league president: "It was certainly not the will of the people to know the outcome of the elections while standing in line to vote."

Voting is a key act in our democratic system. We hope the networks will consider this seriously and refrain from projecting or characterizing results until the polls have closed. We will be watching their performance in November very carefully.

We hope that the persuasive voice of Congress can be added to other voices to send our message to the media: No early projections, please. Let's let the voters decide elections.

Thank you for your attention. Elections are dear to the heart of the League of Women Voters and I especially appreciate this opportunity to relate to you our concern about this blemish on our electoral process.

[The statement follows:]

STATEMENT OF JULIA A. HOLMES, LEGISLATIVE ACTION CHAIR, LEAGUE OF WOMEN VOTERS OF THE UNITED STATES

Mr. Chairman, I am truly delighted to be here today to talk about the problem of early projections and characterizations of election results by broadcasters—projections and characterizations that are made before polls close and before voters are finished voting.

The League of Women Voters of the United States is a nonpartisan political organization made up of more than a quarter of a million members and supporters in 1,300 state and local Leagues in all 50 states, the District of Columbia, Puerto Rico, and the Virgin Islands. We do not support or oppose candidates for election to public office.

The League of Women Voters urges your support for H. Con. Res. 321. We believe that projections and characterizations of election results by the news media before the polls close have an adverse impact on elections and interfere with the constitutional right of every person to vote. H. Con. Res. 321 calls upon broadcasters and other members of the news media to voluntarily refrain from projecting or characterizing the results of an election before all the polls have closed and to adopt guidelines to assure that data from exit interviews are not used to make early characterizations or projections of election results.

Early projections of election results present problems that are getting worse instead of better. In 1980, all three major commercial television networks made early projections of election results. Again in 1982, all three networks made early projections. And now in 1984, the networks not only made early projections of election

results during the Democratic Party presidential primary season; they also developed a new technique for telling the public the likely outcome of elections before the voters have finished voting. They now make characterizations of election results before polls close.

The issue of early projections is one that alarmed many Americans in the 1980 election period and that has continued to occupy a central place in the attention of election observers. Let's review the facts.

In the 1980 presidential election, the National Broadcasting Company, using exit polling as the basis of their analysis, projected Ronald Reagan the winner of the presidential election at 8:15 Eastern Standard Time, fully two and three-quarters hours before the polls closed in California, Oregon, Washington, Alaska and Hawaii, and substantially before polls had closed in most states in the Mountain Time zone. ABC projected the same result at 9:50 p.m. EST and CBS did so at 10:15 p.m. EST, both well before the 11:00 EST closing time for the polls in most western states. Neither ABC nor CBS used exit polls in 1980 to project their results, choosing instead to use analyses of actual votes from key precincts. All three networks justified their predictions on the basis of their judgment that Mr. Reagan had won sufficient electoral votes in states in which polls had already closed by the time of their projections.

Voters expressed outrage at this early announcement that the election was over before many had even voted. Candidates also were concerned, particularly in close races that could have been affected by those votes not cast after would-be voters saw or heard the early projections. Many people wrote to the League of Women Voters, and the League as well as many other organizations expressed the view to the networks that the networks made a serious error of judgment and should in the future voluntarily refrain from early projections. The League and the Committee for the Study of the American Electorate joined other organizations in seeking to influence networks to exercise such voluntary restraint.

(I must say parenthetically that the 1980 situation was complicated by President Jimmy Carter's concession of defeat at 9:45 p.m. EST. This concession occurred before the polls had closed in the West and added to the dismay of western voters already concerned about the NBC projection an hour and a half earlier.)

A Los Angeles Times public opinion poll of registered voters conducted on November 9–13, 1980, found that 71 percent of those surveyed felt that broadcasters should not have announced the projections until polls were closed in all parts of the country. Voters in eastern states felt as strongly about this as voters in western states. The Field Institute survey of Californians conducted in January 1981 found that a similar percentage of adults felt it was improper for the broadcasters to project election results before the polls had closed. Election officials were gravely worried not only about the 1980 events, but also about the implications of continued early projections in future elections.

An analysis of the 1980 situation by Professor M.X. Delli Carpini of Rutgers University found that early projections had a measurable effect on voter turnout at both the presidential and congressional levels, with the greater effect at the congressional level. The effect was found to be present not only in western areas, but in non-western areas as well. Further, this researcher argues that the impact of early projections was large enough in some districts to have affected the outcome.

As the 1982 elections were held, observers watched carefully to see what the networks would do regarding early projections, and the results do not augur well for 1984. While the networks stated a policy in 1982 of not projecting results before the polls were closed in individual states, the League and the Committee for the Study of the American Electorate found that the actual practices of the networks did not meet their own stated standard.

Our two organizations found that two major networks (ABC and NBC) projected a small number of elections before any polls had closed in certain states. These were minor violations of their standard, but indicative of carelessness, at any rate. At 10:56 p.m. EST, NBC announced projected winners, when polls closed at 11:00 p.m. ABC did the same.

A second finding has more implications—all three networks projected results of elections in states overlapping two time zones and in states in which certain polling places were permitted under law to be open longer than others. These are such states as Michigan, Maine, Florida, North Dakota, Indiana and Kansas. In all cases, projections were made when the polls had closed in one part of the state but were still open in other parts of the state. All networks engaged in such early projections. A copy of our report on 1982 election early projections is attached for your reference.

We also found that, while in 1980 only NBC used exit polls as the basis for early projections, in 1982 all three networks did this. Exit polling can enable a network to project a winner at any time at all during an election day—there is no reason a network could not use exit polling to declare winners as early as 2 p.m. EST or 3 p.m. EST. Such a prospect makes those of us shudder who have a strong concern for protecting the citizen's right to vote and who expect that the vote will count.

In 1984, all three networks made early projections of results for the Iowa Democratic caucuses. But perhaps more ominously, the networks and other news organizations developed the technique of making characterizations of election results before the polls close. Characterizations were made in at least four primaries of caucuses. In making characterizations, the broadcasters say that "trends are" or that "it looks like" the election will have a certain outcome. Another characterization technique is to say that "indications are" or that "exit polling suggests" how certain blocs of voters are voting. Coupled with a description of how a particular candidate was expected to do with those voters, it is clear to even a casual observer what the broadcaster believes will be the result of the election. The use of characterizations seems to be the network's response to public concern about early projections. We believe that characterizations can have negative impacts on voter participation similar to those caused by early projections, because the fundamental problem with characterizations and early projections is the same—broadcasters are telling the public the results of elections before all the voters have had a chance to vote.

The nation is faced with a very serious matter of ensuring every person's right to vote, unaffected by early projections and characterizations. Network executives announced in the summer of 1983 that they felt they had a right to make early projections of election results and intended to continue their practice. Whether strong citizen pressure on them can change their minds is unknown at this point, but the League of Women Voters intends to do all that it can to persuade the networks to refrain from early projections. We received many letters from distressed voters after the 1980 debacle, but none perhaps so cogently worded as the following from a local League president: "It was certainly not the will of the people to know the outcome of the elections while standing in line to vote."

The Congress has an opportunity to add its strong voice in urging the media to voluntarily refrain from making projections or characterizations of election results before the polls close. Passage of House Concurrent Resolution 321 will express the deep concern that the American people feel about protecting the electoral process. By asking for voluntary restraint rather than prohibiting or regulating projections and characterizations, House Concurrent Resolution 321 maintains a balance between freedom of the press and the integrity of the electoral process. It avoids First Amendment questions while seeking protection of voting rights.

In addition to calling for voluntary restraint in making early projections and characterizations, House Concurrent Resolution 321 calls upon the news media to develop their own guidelines to assure that data from exit interviews is not used in making early projections and characterizations. Exit polling provides valuable election information. But we believe that the media needs to develop guidelines so that exit polls are not used in making projections or characterizations before the polls close.

Voting is a key act in our democratic system. We hope the networks will consider this seriously and refrain from projecting or characterizing results until the polls have closed. We will be watching their performance in November very carefully.

We hope that the presuasive voice of Congress can be added to other voices to send our message to the media: No early projections, please. Let's let the voters decide elections.

Thank you for your attention. Elections are dear to the heart of the League of Women Voters, and I especially appreciate the opportunity to relate to you our concern about this blemish on our electoral process.

[The following information was subsequently received for the record:]

LEAGUE OF WOMEN VOTERS OF THE UNITED STATES,
Washington, DC, August 9, 1984.

Hon. BOB PACKWOOD,
Chairman, Senate Committee on Commerce, Science and Transportation, Hart Office Building, Washington, DC.

DEAR SENATOR PACKWOOD: There were several questions raised during the Commerce Committee's recent hearing on early projections of election results that I would like to respond to for the record.

Question. What is the difference between public opinion polls that indicate the likely outcome of an election and early projections and characterizations of election results?

Answer. Early projections and characterizations are statements of how voters are actually voting. They interfere with an election while that election is under way. Public opinion polls, on the other hand, describe how people view candidates before an election. They do not intrude directly into an ongoing voting process.

Question. Would the League be concerned about early projections and characterizations even if they were totally accurate?

Answer. Yes. We are concerned about early projections and characterizations because they interfere with the voting process while it is under way. They send a signal that an individual's vote is not important. We believe this is a wrong signal to send in a democratic system of government. Just as importantly, a projection or characterization in one race, such as the presidential race, can affect voter turnout and thus can influence the outcome of other races, such as congressional or local races.

Question. Are there circumstances in which exit polls can appropriately be used to project or characterize election results?

Answer. We believe that only actual election results should be reported before all the polls for a contested office are closed. Exit polls should not be used to project results in one area, even if that area's polls are closed, if another area is still voting in an election that includes both areas. For example, several states include more than one time zone or allow certain polling places to remain open longer than others. It would be inappropriate, in our view, for a broadcaster to project or characterize results of a U.S. Senate race in those states based on exit polls from precincts where the polls are closed while the polls in other precincts in that state remain open. Exit polls provide invaluable information for understanding and explaining behavior. We believe exit polls should not be used to directly influence voter behavior.

Question. Are the major television networks now voluntarily refraining from projecting or characterizing the results of elections before all the polls have closed?

Answer. No. Though the networks announced in 1982 that they would exercise voluntary restraint, all three projected results in 1982 for elections in states with overlapping time zones and in states in which certain polling places were permitted to stay open longer than others. Again in 1984, during the caucuses and primaries, all three networks made early projections or characterizations.

Thank you for the opportunity to respond to these questions for the record.

Sincerely,

JULIA A. HOLMES,
Legislative Action Chair.

The CHAIRMAN. Ms. Holmes, let me ask you this. Do you have any objections to the networks projecting election results when Eastern polls have closed?

Ms. HOLMES. We have no objection to reporting actual results. We object to projecting before the polls are closed.

The CHAIRMAN. And I know what you mean about the word "characterization." To the average listener, when an anchor person comes on and says, well, it appears to NBC that Ronald Reagan has won the election overwhelmingly, that is a prediction of an outcome as far as the listener is concerned. And you can call it a characterization or you can call it a sample or whatever you want. To the listener, it is a prediction of who has won the election.

Ms. HOLMES. Correct.

The CHAIRMAN. Norma, let me ask you this. Do you think in terms of voter turnout you could have the reverse situation? If the networks were saying, well, it is close in the East but it looks like Vice President Mondale has taken Pennsylvania, he was not expected to, and he is ahead in Georgia and it is going to be a close race in Florida, it looks like this election is going to be decided in the West and especially in those very crucial Pacific Coast States,

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would that have a tendency to increase our turnout rather than decrease it?

Ms. PAULUS. I think so.

The CHAIRMAN. That is no justification one way or the other. You would hope that people would come out because they are going to come out and not because they are interested only in the presidential race and they will turn out or not turn out depending on that race.

Let me ask you, since you have to administer the election laws.

Ms. PAULUS. Of course, as two Republicans we should not be complaining about this, because it works to my advantage in my opinion.

The CHAIRMAN. Well, from your standpoint and mine it has to date.

Ms. PAULUS. There is a point made by the representative of the League that I think should not be overlooked by the committee, and it weakens the networks 'position on this in my opinion. That is that NBC came out with their projection and really jumped the gun at 5:15. Now, if there is nothing wrong with it and they did not perceive that it would have an effect on the election, why did not the other two networks leap into the fray immediately?

There was some reticence shown by the other two major networks, and finally they were goaded into it, in the spirit of competition. But I think if you look back at 1980 and analyze carefully what she has given you and the timeframe, you will see that the other two networks held back until they were forced to through competition.

So that means to me that the other two networks were saying, hey, we really should not be doing this, but the other guy is doing it, we have got to do it to compete.

The CHAIRMAN. Norma, you are the State's chief elections officer. Are your principle objections to the 24-hour voting, or meridian voting, where all the polls will close at the same time, basically cost and ballot security?

Ms. PAULUS. It is not cost, because I think the election process, of course, is the backbone of the democracy. So whatever it costs, we will have to find the money for it. That is not my real concern.

My real concern is that we could not get qualified election board workers, and I do not think that the situation in Oregon is any different than it is in most States. Indeed, we are finding it difficult to find competent people. We ask these volunteers, essentially volunteers, to come in and run a very technical, complex situation, and it is getting more so every year, with technology advancing and instant communication.

Yet we hand them this very complex, technical job only every 2 years. So we train and train and caution and caution, and we still have errors made, serious errors. And we try to get the same qualified people to come in again and again, and we have lost a significant number of our most competent, experienced election board people by women like me going into other fields.

And so if you tell me that the answer is to keep the polls open longer or 2 days, I would resist that for that reason and the fact that it would make it harder to secure the system.

The CHAIRMAN. I am curious. What do we pay our election board workers now?

Ms. PAULUS. Minimum wage.

The CHAIRMAN. Slade?

Senator GORTON. Ms. Paulus, it seems to me that these projections or this effect can come about in three different ways, although they are closely related, and I wonder if you would comment on each. There are some States, of course, which count and issue through some of their elections officers partial actual returns before their own polls close, although I think that is a minority of the States.

Then of course there is the problem created by the fact that polls do in fact close in Eastern States while it is still late afternoon on the Pacific Coast, and those results can be used not only in reporting raw numbers but to make projections.

And third, of course, is the use of exit polling, which can allow for projections while the polls are still open in Eastern States. So presumably you can have that kind of projection no later than noon eastern standard time.

Could you relate the importance or the effect on the vote of each of those? Is one of them significantly more important than the other?

Ms. PAULUS. Well, first of all, you have to separate, I think as much as we can, President Carter's concession speech. And a month ago I would have said that we might have that again, but now that Mr. Mondale has Geraldine I do not expect that. In other words, I think that it is very rare for a Presidential candidate to concede that early on election night.

But we have analyzed that very carefully. At first I thought it was the President's concession speech that brought about that, but that was much later than when the initial droves left. The initial droves left the lines in our State before President Carter conceded, and we have tried to separate that.

The exit polling is another problem. We have a statute in our State which requires people who are electioneering to be a certain number of feet away from the entrance to a polling place, and we also have one that pertains to exit polling. And we have had some difficulty with it, but not much, once it is explained to the people.

My problem with exit polling is, as the statistical sampling gets smaller, and smaller I think the fundamental question there is, are we reflecting public opinion or is it being created? And that is something for statisticians to ask, but there has been a lot of questioning about that.

And of course, I tell the people in Oregon when they complain about exit polling that the best thing to do is to tell them it is none of their business when they are asked. But the projection is—we, in the election business, spend a good share of our time trying to convince the voters that each vote does count, that their vote, their participation, is important, and the networks by early projections undo that, undermine that.

And as someone earlier said, the election system is only as good as the public perceives it. We could run the best, most honest, efficient election system in the world, and it does not make any difference if the public perceives it to be something other than that.

Senator GORTON. Do you or Senator O'Pake think State actions to restrict exit polling similar to that of Washington would do much good? Would it contribute significantly to reducing this problem, or do you absolutely have to have some significant restraint on the part of the networks?

Ms. PAULUS. Well, I do not think that this resolution is really a significant restraint. It is a very appropriate plea to the networks to withhold that information.

Mr. O'PAKE. The most that the States can do, Senator, is try to make sure that people can get in and out of the polling place free of harassment. And I am sure that as each State adopts some kind of regulation affecting the decorum at the voting place, that will be challenged in court, as the networks have challenged the Washington State statute.

And I am not sure, very frankly, how effective 30 different solutions regarding conduct of the election place will be with regard to the larger problem, that is, the use of TV to get into people's homes the notion that, hey, this election is over before it is. So I much prefer the route, of course, that the national Congress can take over the individual quilt, crazy-quilt that States may find themselves having to resort to.

The CHAIRMAN. Senator Hollings?

Senator HOLLINGS. I have just a couple of questions, Ms. Paulus.

One observation: Whether it is being reported or whether the result is being created, you are looking at exhibit 1. My defeat was my own fault, but I had that tremendous frustration throughout a 1½ year period, and unless you were an astronaut or a former Vice President, you were not even in the race.

I will be specific. This goes right into the polling because polling more or less makes the judgments.

On January 3 of this year, with the candidates, for example, offering up in New Hampshire, the different networks and so forth assigned reporters to cover it. The Associated Press, for example, sent a women reporter, who is the president of the Washington Press Corps, to cover me. But a half hour before she arrived, she was assigned elsewhere. Since she was a good friend, she called and apologized saying, "Until a half hour ago, I was assigned to you but now they have taken me off and they are going to save the money."

So I was not covered. And as I went around campaigning and everything else, there was not a story filed. So it appeared as though I was not campaigning, and so forth.

That goes right into your getting the money, the visibility, everything else, and getting the result. I pulled up to the New Hampshire Insurance Building. I campaigned the entire 14 floors. It took 4½ hours. My colleague, Senator Glenn, pulls up and he has got two busloads of press covering him. I had three reporters. I think I covered it, I politicked it better and everything else, but that is not the way it appears, and that was all decided as a result of polling as to whether or not you were a significant candidate and everything else.

It is created from the word go. It persists right on through.

And then I remember when they projected in Iowa, just like the former witness testified, even before they began voting; it was all over. And therein lies a story.

As a matter of interest, because we are trying to facilitate registration, and I believe you are progressing.

You say you can register on the day to vote in Oregon?

Ms. PAULUS. Yes.

Senator HOLLINGS. You can just walk right in and register and vote at the same time?

Ms. PAULUS. Yes.

Senator HOLLINGS. And that does not cause any voter frauds or anything else?

I guess with computers you can check and double check and everything else, and there is no difficulty?

Ms. PAULUS. Well, no, that is not true, Senator. In our case we cannot. Only half of our counties are computerized. We are very diverse geographically, and our Eastern counties are still by paper ballot. But we have had that system. We can register by mail and register up to and including 8 o'clock on election day.

And I participated in drafting that bill when I was in the legislature at the request of the AFL–CIO.

And now, chief elections officer, having watched it for 7½ years, I am trying to get it repealed and have a 20-day cutoff reinstated because of the mobility of our population particularly.

Senator HOLLINGS. From your experience you would recommend a 20-day cutoff, 20 days before the election?

Ms. PAULUS. Right. And we are, if not the only State, one of the few States that have ever had any experience with it. The sole reason that we did it in 1975 was after Watergate and Vietnam, the malaise that was settling across the country and turning people away from the polls, we were trying to find different ways in which to encourage participation, and that is the sole reason we did it, is because we thought it would get more people involved. But it did not, and I have monitored it very closely since 1975.

And last, registration, in my opinion, does not increase it. But I will tell you what does, and that is something else we are doing, and that is voting by mail, have entire elections done by mail, and the results are phenomenal.

I have conducted over 40 of them in the last 3 years, and we have gone from having 2 people vote on a $2 million budget to a 95-percent participation rate. So eventually the networks will not have this problem because we will have a different system of voting. But until we do, I would certainly urge the committee to at least request the networks to restrain themselves.

But if you are interested in vote by mail, I would be happy to spend some time with you or send you information.

Senator HOLLINGS. I did not want to take the committee's time, but what percentage vote by mail in Oregon, would you say?

Ms. PAULUS. Pardon me?

Senator HOLLINGS. What percentage vote by mail?

Ms. PAULUS. Well, we are conducting it in different parts of the State, one place here and one there, to acquaint the public with the idea.

Senator HOLLINGS. And it has had a very good response, as I understand it?

The CHAIRMAN. But you are doing it mostly in special elections at the moment?

Ms. PAULUS. Yes.

The CHAIRMAN. Where you had a notoriously low turnout. It is not a regular primary or general election, but a special school bond election or something like that. The vote by mail just increases the turnout incredibly.

Ms. PAULUS. I could do it in a general election or a primary election. I have resisted the pressure from some groups to do that because any change in the election process I think should be done very deliberately, and this is such a revolutionary idea that I am trying to proceed very cautiously to make sure it is implemented properly. But it is the wave of the future. But that is a long time coming for the primary and general elections.

Senator HOLLINGS. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Jack?

Senator DANFORTH. I would like you to help me understand two distinctions, if you would. The first distinction is what is the difference, in your judgment, between exit polls and any other political poll. That is to say, let's suppose that CBS the LA Times or somebody, has a nationwide poll on the Presidential campaign the weekend before the election, and that poll shows that one candidate is going to win by a landslide. Is that any different from a poll taken on election day, and if there is a distinction, why is there a distinction?

It is clear to me that published polls during the course of the campaign have a significant effect on the election, a significant effect in contributions, a significant effect on the bandwagon factor.

It could be that published polls by newspapers, TV, or whomever 3 weeks or a month before an election, have an even greater consequence than polling results taken at the actual polling place.

So the first question I would ask is what is the distinction between exit polls and any other polls taken by the media?

The second distinction I would like you to draw is if we are concerned about people on the west coast getting the results early, what is the difference between exit polls and the information that comes from the normal reporting of polls that have closed in, say, Maryland or Virginia or New York?

Is it not exactly the same as far as people on the west coast are concerned, if the TV networks were to go on the air and say the polls are now closed in New England and the results are computerized, and we know in the first half hour that it is absolutely clear that Candidate Blokes is going to win by a landslide, and we think that it is clear that the election is over?

So what is the difference between exit polls and other polls, and what is the difference between exit polls and simply the statement to people on the west coast that the polls have already closed in the east and the winner is such and such a candidate?

Mr. O'PAKE. I will try the first question. I think the distinction is in what is done with it and when. I think that publishing the result of a poll on the Sunday before the election is done in a way

which lets people know that this is a snapshot view as of that time, and of course, there are margins of error, as all of the pollsters will indicate. But when a voter hears as he is standing in an election line or right before he was going to leave his home to go to the polls that not only there is a poll which shows that so and so is ahead, but that so and so has won, I think that the impact is what is devastating. It is the timing, it is the way that it is used very dramatically at that time, and that I think is a very, very important distinction.

People can put into its proper context the fact that a poll is taken because it is taken weekly. Gallup, Harris, they are all doing it. But again, when you hear it on election day before you voted, it discourages you because it has the aura or the perception of validity based on a result.

The second distinction between projecting winners based on polling as opposed to reporting the actual closing, it is very difficult to say that a network cannot report actual results after the polls are closed and after all the results have been tabulated. But that is one thing I think that, to be accurate they are going to want to wait until all the results are in, they are correct, and I am not so concerned about that because the fact that Maryland went one way or Pennsylvania went one way is not the same as saying that Ronald Reagan has beaten Jimmy Carter and it is all over.

Senator DANFORTH. I do not understand that at all.

Mr. O'PAKE. Well, what I am saying is the fact that a voter in California knows that Maryland went for Reagan——

Senator DANFORTH. What if he knows the whole east coast has gone for Reagan?

Mr. O'PAKE. If he knows the whole east coast went for Reagan and that the electoral votes have already put that person over the top, that is one thing. If it is based upon actual results, then that is news. That is an outcome, that is a result.

But if the networks are trying to give the impression based upon exit polls, a small sampling, then I think that is an unfair thing to drop on people on the west coast because it is not based on actual tabulated results, it is based on projections which are based on a handful of sample voters as they come out. That is the distinction between those two.

Senator DANFORTH. You think it might be inaccurate, in other words?

Mr. O'PAKE. Not only inaccurate, but the smallness of the sample, the percentage of error.

Senator DANFORTH. Well, let me ask you a hypothetical. Would it change your mind if they were absolutely accurate?

Mr. O'PAKE. No, because first of all, you could never make sure that they are absolutely accurate.

Senator DANFORTH. Well, just suppose they are.

Mr. O'PAKE. Hypothetical, no, it would not change the result because they are not facts, they are not results, they are polls, and the very nature of polling is such that it is not the same thing as the election result tabulated, certified by the election boards.

Senator DANFORTH. Do Ms. Paulus and Ms. Holmes care to respond to those two issues?

Ms. HOLMES. Reporting results is definitely different than exit polls. Results are actually bona fide news. That is what the networks can do. But when you take the exit polls and project a winner or do a characterization, that is what we object to. Exit polls can provide you with some valuable information, but when you start using it to project results, then you start interfering with the electoral process.

I mean, some people even think that the news media is——

Senator DANFORTH. I do not understand that. I do not understand the difference between telling people in Oregon that it is all over on the east coast and telling people in Oregon it is all over on the east coast. I mean, what is the difference?

Ms. HOLMES. Well, I am not sure I understand what you are saying, that it is all over on the east coast, and then you say again it is all over on the east coast.

Senator DANFORTH. I thought the objection was that people on the west coast were being influenced on whether to vote and how to vote because they already know the results on the east coast. If the polls close early on the east coast and they are informed as to the actual results or they are informed on the basis of 10 percent of the returns being counted, then what is the difference? Maybe you get a jump on it if it is a poll, but I don't understand the difference in terms of prejudicing the people on the west coast.

Ms. HOLMES. We in the league are concerned about when exit polls are used to project results while the polls are open. Do anything you like after all the polls are closed, but using exit polling to project results while the polls are open provides an impediment for the voter.

I quoted a line from a local league president who was saying that the networks were projecting the results while people were standing in line to vote. The public has a right to know what the actual results were on the east coast, but to couple that with early projections really provides an impediment for the voter on the west coast, those who are in their cars on their way to vote, those who are standing in line.

There is a difference. You are saying that you have a problem distinguishing between public opinion polls, such as the Harris polls in the newspaper, and exit polls. I think that there is a difference between them. You have the Harris poll saying it seems that X is ahead by 10 percent, and newspapers report that in the morning or in the afternoon. With an exit poll, the media is going to be projecting the actual results of the election. That interferes in the electoral process while the polls are open.

Mr. O'PAKE. Senator, the major difference is that I do not think it is news, nor is it fair to project winners based on a sampling. We don't know whether they are scientific, we don't know whether people were telling the truth when they answered that, and of course, you know what Mike Royko suggested in Chicago, lie.

We are not suggesting that. But we do not proclaim victors in elections based upon samples done in the first hour. Otherwise we would not have to wait to count all the ballots.

Senator DANFORTH. Well, the networks clearly do that. You are not suggesting that they do not do that?

Mr. O'PAKE. I know they do that, and I think that is wrong, too.

Senator DANFORTH. Should we include that in our resolution? We do not want them to proclaim winners until 100 percent of the votes are counted?

Mr. O'PAKE. I think you should urge voluntary.

Senator DANFORTH. And proclaimed by the Secretary of State?

Mr. O'PAKE. Not until proclaimed by the Secretary of State, but I think it is fair to project winners based upon unscientific samplings, because news is who won the election, and we do not have elections won based on samples.

The CHAIRMAN. Jack, your time is up on this round.

Senator DANFORTH. Could I just ask Ms. Paulus if she could respond to my questions? I do not think she had a chance to.

Ms. PAULUS. No, essentially my answer would be the same.

I mentioned before that I am concerned that one of the fundamental questions is when you use exit polls to project the winner in the race and the sample gets smaller and smaller, are we in effect letting them create public opinion, or are they reflecting it?

And we have had a situation in Oregon where the news media which used essentially the same systems, stringers reporting results from the counties, which is the way the exit polling works, as I understand it, they have stringers in the different areas doing exit polling, and then they phone that information in.

Well, during the last general election, the newspaper, one of the stringers transposed an eight into a five, and the newspapers the next day projected the wrong person the winner of the tax judge race, and it was not until we had the official votes in from the county that we had to go to that person and tell him that the other man had won.

So, those people that are phoning in the information from exit pollings can make an innocent mistake, and the smaller the sampling gets, the more mischief it can create when it is used to project winners.

The CHAIRMAN. Jim?

Senator EXON. Thank you, Mr. Chairman.

I wish to address one question to Ms. Paulus, and if Ms. Holmes or Mr. O'Pake can enlighten me on it, I would be happy to hear their comments.

I want to go back to the 1980 Presidential election when it was alleged, at least, that the projection by the networks of the win of President Reagan, and then the early concession by speech by President Carter, a speech made even if the polls were closed, if I remember it correctly, certainly affected voters, especially in the West.

Now, it has been stated over and over again that that probably could not have changed the outcome of the Presidential race, but it could change the results in some of the local races, maybe in some of the congressional races. And I think that is the heart and soul of what we are talking about here.

Have you done any studies to indicate either in Oregon or other west coast States of the drop in voting in the last hour or hour or 2 of that 1980 election, as compared to previous elections?

To put it another way, do we have any statistical evidence based upon past history that there was a significant drop in the turnout

of voters because of either President Carter's concession or the projections that were made by the networks?

Ms. PAULUS. I do not have a scientific study or survey. There was no money allocated from the State of Oregon to pursue that. But I do understand that the networks themselves have done that after the furor erupted, and it is my recollection that one of the surveys done by a network itself indicated that at the most, to use the network's words, the dropoff was 2.7.

And there were races in the West that were determined by a smaller percentage than that.

It is my belief, based upon firsthand accounts from election board people and county clerks and the news media and the hundreds of letters and calls that I have gotten, that it did have an effect, and that it has an effect on—it would not have affected the outcome, in my opinion, on the Presidential race in our State, but in my opinion, based upon those things, it did affect the outcome of some legislative races and quite possibly the congressional race in our area.

Senator EXON. Do either of the other two witnesses have anything they could add on that?

Mr. O'PAKE. Yes, Senator, that was precisely the point I was trying to make in my testimony. There is a study done by the University of Michigan, specifically by Prof. John E. Jackson. It is titled "Election Night Reporting and Voter Turnout."

As a matter of fact, ABC news contributed to the cost of doing the survey in 1982, and I commend the entire report to your reading.

But to generalize, my recollection is that the drop in voter turnout in the last hour or two was anywhere from 6 percent on the east coast, in Pennsylvania, to 20 percent on the west coast, as measured with voter turnout in Presidential years in the preceding election, after the Carter concession and the first network projection of the winner.

But, I think it is the only national study that has been done by an independent nonpartisan, nonpolitical group, and again, the University of Michigan, the Jackson study, "Election Night Reporting and Voter Turnout."

Ms. HOLMES. In my testimony earlier, I mentioned Prof. M.X. Delli Carpini, who did an analysis of the 1980 election. You might refer to his study.

Senator EXON. I appreciate those two suggestions, and I will take a look at those.

I would just say that it would seem to me that it would not be too costly a process for proper officials in some of the States—and I am particularly concerned about that west coast situation—to see, you know, I would think voting officials would be able to fairly easily determine if there was a significant dropoff. That might be difficult.

Let me ask you this, Ms. Paulus. In Oregon, for example, do you have any way to tell as an election official as to how many people voted in the last 2 hours, or do you only have the totals?

Ms. PAULUS. No, it is just based upon reports that we would get from the counties and the election board people.

Senator EXON. Do you not in Oregon begin the count of the ballots? In other words, by noon, is it not customary for the tallying

officials to go in and actually count the ballots, say, up until noon or 1 o'clock?

Ms. PAULUS. Yes, in the computerized counties, the information is fed into the computer, but the results are not fed out until after 8 o'clock. In the paper ballot counties, it depends. It varies with the election. They could do an early pickup and a count, but the information is not released, and there is a specific statute which makes it a felony for an election board person to release that.

Senator EXON. I see.

Mr. O'PAKE. Senator, I would like to—and this may help to respond to Senator Danforth. In that Jackson survey there is this conclusion, and you have to digest the analysis that leads up to the conclusion, and I will just quote one sentence. "Hearing early results as differentiated from the projections has no impact on turnout.

That is a conclusion of the University of Michigan study. And there are pages that lead up to that conclusion.

Senator EXON. Thank you, Mr. Chairman.

The CHAIRMAN. Larry?

Senator PRESSLER. Thank you very much.

This is the sort of an issue that I personally hope that Congress would not have to become involved with or legislate on although maybe we will have to. I would hope that something like this could be resolved privately or among groups such as the League of Women Voters and the networks,

But nevertheless, if it is not resolved, then of course Congress will have to become involved. We face other issues, such as the economy and nuclear weapons, and so forth. This also is an important issue, the choosing of our leaders, but it is the sort of thing I believe could best be solved by actions among the networks and private groups.

Nevertheless, I did want to ask a couple of questions. In my own State of South Dakota, we have two time zones, and there have been agreements with the local networks that have worked out quite well to prevent reporting before the 8 o'clock time.

But the thing that I misunderstand here a bit is the league's recommendation.

Now, is the League of Women Voters recommending that exit polls not be used?

Ms. HOLMES. The recommendation of the league is that exit polls only be used after the closing of the polls. Exit polls should not be used to make early characterizations or early projections.

We are not against exit polls per se.

Senator PRESSLER. But you could use them on a nationwide basis from one area after those polls had closed, even if the polls had not closed in the other areas?

Ms. HOLMES. If you are talking about using it on the east coast——

Senator PRESSLER. Or in a State with two time zones.

Ms. HOLMES. Not in a State with two time zones, because then all of the polls are not closed. Exit polls should be used only when all the polls are closed.

Senator PRESSLER. So then you could not use the exit polls——

Ms. HOLMES. Until all the polls are closed.

Senator PRESSLER. Until the polls in California were close, or the polls on the east coast.

Ms. HOLMES. You asked about the polls being closed in two time zones.

Senator PRESSLER. Then let me ask about it nationwide. What is your position there?

Ms. HOLMES. You might broadcast early projections on the east coast only, after the polls are closed in the East, but not use them on the west coast when the polls are still open on the west coast.

Senator PRESSLER. So then it is different. So then your recommendation is different where there are two time zones.

Ms. HOLMES. Yes, in the United States rather than in one State.

Senator PRESSLER. Why is that different?

Ms. HOLMES. Because in one State, in the State of Indiana you have two time zones, and so in that State there are people that are still at the polls voting. So it would be better to wait until all the polls are closed in that State.

Senator PRESSLER. Then the recommendation is the same for two time zones as it is nationwide.

I am not criticizing your position, I am just trying to understand it.

Ms. HOLMES. I see what you are saying.

Senator PRESSLER. So there would not be any exit polls announced, but you could announce the actual results of the election on the east coast before the California polls have closed.

Ms. HOLMES. Yes, the results, because the people in the East have a right to know actual results.

Senator PRESSLER. So you would not use exit polls in three of the time zones at all. They would be of no value if you could only announce the actual results. The exit polls would be of no value.

Ms. HOLMES. Well, it depends upon how you define the value. Value to whom?

Senator PRESSLER. Well, what you are saying essentially is that you would not use exit polls in three time zones. You could only use them in the last time zone. I am not really arguing the point. I am just trying to understand it. It seems to me that the recommendation is that you cannot use exit polls in three time zones. You could only really use them in the final time zone because the actual results would be announced in the other three time zones.

Ms. HOLMES. That is one way of looking at it, yes.

Our view is that projections should not be made before the polls close. Now, if you want to say that exit polls should not be used at all until all the polls have closed in the Nation, that is something that we have to look at. If that is going to have an effect upon votes, then we have to look at that.

Our view is that exit polls should not be used to provide information for early projections before the polls have closed.

Senator PRESSLER. But you could announce the actual results.

Ms. HOLMES. Yes, I said that all along you could announce the results. Actual results and early characterizations and projections, in my opinion, are different.

Senator PRESSLER. OK.

What you are saying is that in a nationwide Presidential election, exit polls could not be announced until after the actual results were announced in three time zones?

Ms. HOLMES. Maybe that would be a better way of going about it, yes.

The CHAIRMAN. Are there other questions of this panel?

[No response.]

The CHAIRMAN. If not, thank you very much.

We will conclude with a panel of Edward M. Joyce, president, CBS News; Lawrence Grossman, the president of NBC News; George Watson, the vice president of ABC News; and Lawrence Fraiberg, the president, Television Stations, Group W, Westinghouse Broadcasting.

Mr. Joyce, why don't you go first.

STATEMENT OF EDWARD M. JOYCE, PRESIDENT, CBS NEWS

Mr. JOYCE. Thank you, Senator. I appreciate the opportunity to appear before the committee to discuss the subject of network election projections, an issue which has been debated by politicians, journalists, and social scientists for 20 years.

This debate has intensified following the 1980 Presidential election due to the suggestions that early reports of President Reagan's landslide victory may have discouraged some voters from going to the polls, particularly in Western States.

Many serious and public-spirited people have expressed concern about this issue. Indeed, as has been noted this morning, the House has recently passed a resolution calling on broadcasters and other members of the news media to refrain voluntarily from characterizing or projecting election results until all the polls for the office in question have closed.

This is an issue that arouses strong feelings, and understandably so. I can assure you that we are aware of those concerns and that we respect them. I can think of few issues which have so absorbed us in trying to act responsibly as journalists, as broadcasters, and as citizens.

But while we are sympathetic with apprehensions about projections and their impact, as journalists we are caught in a dilemma. Elections, and particularly Presidential elections, are events of immense public importance and newsworthiness. Deliberately withholding information about the results once the outcome is clear and the vast majority of the polls have closed would have serious implication and would, we believe, ultimately undermine our own credibility.

Therefore, we cannot agree with the suggestion that we curtail our efforts to report the news on election night in the best and the most accurate way that we know how. We believe, however, that our election reporting has struck a responsible balance, taking into account both our respect for the electoral process and the right of the public to receive prompt and accurate information about election news.

Let me explain how we operate. CBS News does not call or project the winner of any statewide race before the polls in that State have closed or until the vast majority of the polls have closed

in States with more than one closing time. To take the case of New Hampshire as an illustration, although a few polls remain open in that State until 8 p.m., by 7 o'clock, 82 percent of the polls have closed, approximately 98 percent of the votes have been cast. At that time, but not before, we will project the outcome of a race in New Hampshire if we are able to do so.

Opinion has been expressed that exit polling may lead to races being called earlier and earlier in the day. I want to emphasize that I foresee no circumstance under which we would depart from our present projection policy.

In this connection, I also want to make clear that characterizations of the voting are not projections but rather descriptions of early voting trends which do not estimate the final outcome of any race.

Our projections are made only State by State. We do not project California results based upon New York votes, and since we do not project winners in any statewide race until at least a vast majority of the polls in that State have closed, the problem of early election projections, if there is one, is largely limited to Presidential years, and specifically to those Presidential races in which there is a landslide vote.

Now, our critics contend that our reporting of results from the Eastern, Middle Western, and the Southern States may adversely affect voter turnout on the west coat. That is an arguable theory, but I think we must recognize that only limited research has been done in this area and none of the studies persuasively demonstrates that early election projections have a significant influence on voting behavior.

For example, reference was made this morning to a University of Michigan study. That is a widely cited study, concluding that the network projections did in fact have a negative impact on voter turnout in the 1980 election. That finding however was based upon a sample of 53 people who said both they had not voted by 6 p.m. Eastern time and that they had heard early reports of President Reagan's victory before the polls closed in their States. Of these, only nine said they did not vote because they already knew the outcome. And when those statements were checked against actual voting records, it turned out that one of those persons actually had voted, and four were not even registered.

So I respectfully suggest that we must be wary of drawing sweeping conclusions from this kind of data.

And consider this. In 1976 and 1980, the county of Los Angeles kept records of the number of people who voted in some sample precincts during each hour of the day. In the 1980 election, the outcome of the Presidential race was known on the west coast late in the afternoon. In 1976, however, the Presidential election was extremely close and the result was not known until Wednesday morning. And yet, in 1980, when the election was a landslide, a greater share of the Los Angeles vote was cast during the last 5 hours of the voting day than in 1976 when that race was close.

This is the very opposite of the result one would expect if early projections in the 1980 race were a significant factor in influencing the behavior of nonvoters.

In any event, the results in landslide Presidential elections will be clear to voters in the West before all the polls there have closed, totally apart from any projections we might make.

In 1980, for example, 42 percent of the vote had been tabulated nationwide before the polls had closed in California. At that time, Ronald Reagan was leading in States that accounted for 396 electoral votes and has amassed a margin of 2.7 million in the popular vote. Were there no projections at all, the message would have been the same—a Reagan landslide.

As I have noted, we believe it is incumbent on us to report what the electorate has done in the East, Midwest, and South once the polls have closed in those States. To withhold what we know—and what the politicians involved know--until all the polls have closed on the west coast, or for that matter in Alaska, would be unconscionable from a journalistic standpoint.

But there are other ways to address the perception that election night reporting may affect the electoral process. One would be the adoption of a 24-hour voting day with simultaneous poll closings, a measure which CBS has long advocated. Even if this did not prove to be a complete solution to all of the questions which exist in this area, it would be a major and positive step which the Congress could take toward allaying concerns about the impact of election projections without asking news organizations to withhold information which their journalistic judgment tells them should be reported.

In the final analysis, however, I think we must candidly recognize that the problem of poor voter participation in our society results from a host of complex factors which go far beyond the question of early projections or uniform poll closing times. Indeed, the problem of poor voter participation is to a large degree one of low voter registration, something which cannot be affected by anything reported or not reported on election night. Thus, the University of Michigan has found that between 86 and 90 percent of those who were registered to vote in every Presidential election since 1964 did, in fact, go to the polls. This strongly suggests that the real problem in increasing voter turnout is not to curtail election night reporting, but to motivate the large number of our fellow citizens who are so alienated from the political process that they have not even bothered to register. Toward that end, this fall, the CBS Television Network will be carrying an extensive public service campaign urging viewers to register—and to vote.

The goal of encouraging the broadest possible participation in the democratic process is one we can all share. But this goal can only be reached through the conviction and commitment of all of our citizens, and not through agreements by the press to restrict the reporting of information which they believe to be newsworthy and important.

Thank you.

[The following information was subsequently received for the record:]

QUESTIONS OF THE CHAIRMAN AND THE ANSWERS THERETO

Question. Do not states have a legitimate interest in maintaining order around a polling place? Shouldn't a citizen's right to vote take precedence over your interest in gathering news?

Answer. CBS News certainly agrees that states have a legitimate interest in maintaining order around a polling place. However, we believe that there is no conflict between that legitimate interest and rights of newsgathering protected by the First Amendment.

States can and do have statutes which narrowly bar activities which would interfere with voters exercising their franchise or otherwise disrupt the administration of a polling place—for example, by electioneering or by preventing free access to and from the polls. But as the paucity of complaints from voters and election officials concerning the conduct of our exit pollers indicates, the exit polling engaged in by CBS News is done in an orderly and non-disruptive manner which in no way interferes with voters. Persons leaving the polls are approached only after they have voted, are politely asked whether they would be willing to complete a CBS News questionnaire, and are thanked without any other comment if they decline to do so. We do not believe that exit polling conducted in this manner is in any way inconsistent with keeping "order around a polling place."

In our view, statutes which prohibit exit polling per se rather than barring specifically disruptive activities—are overly broad and therefore violate the First Amendment. Indeed, CBS along with ABC, NBC, the New York Times and a local Washington state newspaper, are currently challenging a Washington statute which bars all exit polling within 300 feet of a polling place.

Question. I understand that the League of Women Voters did a study of the 1982 election which showed that all three networks commented on the closeness of elections or predicted results in states in which the polls were still open. How do you make these projections, if you do not use exit polling?

Answer. Initially, we would note that CBS News has not in fact projected the outcome of races before the polls have closed in states with a uniform poll closing time, and the League of Women Voters' study did not suggest that we have done so. Moreover, the commentary referred to by the League study did not involve CBS.

In accordance with its publicly announced policy, which was reiterated at the August 2 hearing before your Committee, CBS News will project the outcome of races in the 13 states with multiple poll closing times if the result is clear, but only after the vast majority of the polls have closed. As we have also made clear on numerous occasions, we do in fact use exit polls for the purpose of projecting election results and characterizing voting trends, as well as to analyze how various segments of the electorate voted and the role played by various issues in the campaign.

Question. The Secretary of State of Washington reports that, after the 1980 election, his office was flooded with complaints from voters and from election workers that people left the polls after results were projected and that far fewer voters than were expected showed up. Assuming that election projections do keep voters away from the polls, how should we respond?

Answer. First, we cannot accept the assumption that election projections affect voter turnout, because there is no reliable evidence which so demonstrates. Indeed, there is considerable statistical information concerning voting trends on the West Coast in the 1976 and 1980 presidential elections which calls into question anecdotal reports of large numbers of voters abandoning the polls after hearing projections of President Reagan's 1980 victory.

For example, in 1976 and in 1980, the County of Los Angeles kept records of the number of people who voted in some sample precincts during each hour of the day. In the 1980 election, the outcome of the presidential race was known on the West Coast late in the afternoon. In 1976, however, the presidential election was extremely close and the result was not known until Wednesday morning. Yet in 1980, when the election was a landslide, a greater share of the Los Angeles vote was cast during the last five hours of the voting day than in 1976, when the race was close. Moreover, overall voting increased in the 1980 presidential election over the 1976 presidential election by a greater percentage than population growth in all three West Coast states—California, Oregon and Washington. These voting trends are precisely the opposite of what one would expect if early projections in the 1980 race were a factor in influencing the behavior of non-voters.

In sum, no reliable evidence that election projections have a signficant effect on voter turnout presently exists; indeed, much of the available information points in the opposite direction. In any event, much of the concern about the effect of early election projections could be aleviated by adoption of a 24-hour voting day with a

uniform poll closing time, a measure long advocated by CBS. Even more fundamentally, because the problem of poor voter participation is largely one of low voter registration,[1] we believe that efforts to increase voter registration should be given top priority in this area. As noted in Mr. Joyce's August 2 testimony, this fall the CBS Television Network will be carrying an extensive public service campaign urging viewers to register—and to vote.

Question. I understand that a study by John E. Jackson of the University of Michigan concluded that election projections do have a definite detrimental effect on voter turnout. Can you comment on that?

Answer. As indicated in Mr. Joyce's August 2 testimony, we have serious problems with the Jackson study. In our view, that study suffers from serious methodological flaws which make it impossible to draw reliable conclusions from that research.

For example, the study's conclusion that network projections did have a negative impact on voter turnout in the 1980 election was based on a sample of only 53 people who said both that they hadn't voted by 6 P.M. Eastern time and that they had heard early reports of President Reagan's victory before the polls closed in their states. Of these, only nine said they didn't vote because they already knew the outcome. And when these statements were checked against actual voting records, it turned out that one of those persons actually had voted, and four were not even registered.

The apparent unreliability of the responses given to the Jackson researchers may perhaps be explained by the fact that the post-election interviews with subjects—which of necessity asked them to recall what time of the day they had voted, when they turned on their radio or TV sets, and what they heard and when they heard it—did not take place until January, 1981, at least two months after Election Day. Because of these and other methodologicial shortcomings, we do not believe that the Jackson study constitutes reliable evidence of the effect of election projections on voter turnout.

The CHAIRMAN. Mr. Grossman?

STATEMENT OF LAWRENCE K. GROSSMAN, PRESIDENT, NBC NEWS

Mr. GROSSMAN. Thank you, Mr. Chairman. I am Larry Grossman, president of NBC News.

I am pleased to appear before you today, and I am glad to testify about something else besides asking for more money for public television, and I hope I still feel that way by the end of this hearing.

As you may know, I have only recently joined NBC News, and when I came on board, one of my first concerns was our position on election projections, and I was worried that the antagonism expressed by so many towards election projections may have been damaging NBC News' reputation. I felt that if our critics' arguments were correct and if we were to change the NBC News policy on projections, we could achieve a considerable advantage in the eyes of many during this Presidential year.

Along with my colleagues at NBC, I undertook a thorough review of the issues, and we consulted with distinguished members of the academic community. NBC News has the benefit of an outstanding polling advisory board who are made up of some of the Nation's best known social scientists who have long experience in election polling. And we were, I might add, very concerned about the import of the resolution that we are discussing here.

I would say that as a result of all of that study, I came to the somewhat regretful but firmly held conclusion that there is no re-

[1] For example, the University of Michigan has found that between 86 and 90 percent of those who were registered to vote in every presidential election since 1964 did, in fact, go to the polls.

sponsible or journalistically sound way to accomplish what the concurrent resolution seeks.

Now, Mr. Chairman, with your permission, I would like to have my statement included in the record, and I think it might be more useful to the committee if I focused the remaining time that I have in some areas that have not been covered here, particularly some of the dangers as I see them of this voluntary effort to hold back the news that we are being asked to undertake.

I am not sure that anybody has paid enough attention to it.

The CHAIRMAN. Go right ahead.

Mr. GROSSMAN. Thank you.

First, it is inconceivable to me as I read the concurrent resolution asking us to hold up, let's say, in the Presidential election this November the results of single States' actions until all of the polls are closed, that States on the east coast can wait 5 or 6 or more hours in order to get the results of their congressional or gubernatorial or local elections and ballots before all of the polls in Alaska, California and so on are closed.

The CHAIRMAN. Let me say that I have talked with Congressman Swift, and that was not his intention. He has no objection to the reporting of election results. His objection is to the so-called characterization based upon exit polling.

Mr. GROSSMAN. Let me address that, Senator.

Because election results is a term of art, obviously when we get early returns of actual results, they are often, as you know, very misleading as to the final outcome because they come from certain precincts, and when the downstate vote or the city vote comes in, a much clearer picture is obtained, so that it is hard for us to see how we can hold off that length of time in reporting on a nationwide basis what is happening in these States. And I don't know that the citizens of those States or the political figures of those States would be very happy in having us do that.

I think the second problem you have is that this action of delaying and eliminating our reporting of information about the election during election day is more likely, it seems to me, to spread misinformation than accurate information. We will have interviews with winners or losers, with concession speeches or candidates or their campaign managers talking about why they won or lost in Massachusetts or New York, Pennsylvnia, or in South Carolina, they will talk about the coattail effect, they will talk about voter turnout, and the journalist will have to sit quiet if we were to voluntarily refrain from characterizing elections while imperfect and imprecise characterizations by interested parties are spread.

I think the American people would not be well served by such a measure.

Third, as you yourself pointed out earlier, Senator, there is a very good chance that we might actually end up discouraging voting than encouraging it.

We had a very good example of that in the New Hampshire primary where the national poll on the eve of the primary talked about the biggest lead held by Vice President Mondale, and everybody knew going in that that was not the case. In close elections, the ability to talk about trends and offset incorrect information immediately prior to an election——

The CHAIRMAN. You just lost me there. I know the poll you refer to. That was the New York Times, CBS poll saying that Mondale has the biggest lead of anybody in the history.

What did you say about how everybody knew going in that was not the case?

Mr. GROSSMAN. I say everybody knew by the time the voting began, from the polling we were taking, that that was not the case, and the inability to report the news as we get it I think may end up in close elections, as you suggested earlier in this hearing, at least may end up diminishing the size of the turnout rather than increasing it.

I think there are significant unanticipated disadvantages if we were to do this, if we were to adopt this position.

Let me focus on exit polls briefly, and then let me focus also on the Iowa caucus issue which you brought out because I think it is important to read into the record the facts of what has happened there, if I may.

The CHAIRMAN. Go ahead. Your time is up, but I was going to ask you about what happened in Iowa anyway.

Were there actual projections before the caucuses had even started to meet?

Mr. GROSSMAN. No, sir.

Let me tell you exactly what happened, at least insofar as NBC News is concerned, for the record, in Iowa. In Iowa NBC had designed a sample which could accurately reflect the expected preferences of the Democratic Party caucuses, and during the period immediately prior to those caucuses, the views of that sample were updated.

When caucuses started at 8 p.m. central time and the first results from those caucuses began to be reported soon thereafter, we not only received the results from one of our key precincts, that is, the actual results, but the News Election Service had begun to provide caucus results to a large number of the media, including print, radio——

The CHAIRMAN. What election service?

Mr. GROSSMAN. The News Election Service, NES.

And the NBC decision desk team concluded that it had sufficient information to project that about half of those attending the Democratic caucuses had expressed a preference for one candidate, at 8:18, which was after the caucus had begun, and by that time all of the members of the caucus were in place.

At 8:18 NBC News did provide a special report containing information about what we knew up to that point, and we updated that information through the night.

And by the way, the information we did have at that point was accurate.

The CHAIRMAN. But no projections prior to 8 o'clock?

Mr. GROSSMAN. That is correct.

Now, just a very brief mention about exit polls, and they have been attacked vigorously here. Obviously if exit polls were incorrect or inaccurate or people were misleading, we would not use them. We depend, we have pride, we need accuracy in our news reporting. We use exit polls precisely because they help us in the accuracy of our reporting, and what exit polls do—we never use them

alone. We use them with key precincts, actual results. We use them with our previous studies and surveys to check to make sure that they are accurate. But they help us improve the accuracy of the reporting of election returns. And to suggest that if we eliminated exit polls we might solve this problem I think is a completely unrealistic suggestion.

I might point out that in 1972 during the Presidential election, prior to the use of exit polls, it was known about the winner of that election at 8:32 p.m. eastern time. With the use of exit polls in 1980, the results came in at 8:15 p.m. So it made a 17-minute difference.

But the chief example of the use of exit polls is to improve the accuracy of what we report rather than to diminish it.

[The statement follows:]

STATEMENT OF LAWRENCE GROSSMAN, PRESIDENT, NBC NEWS, NATIONAL BROADCASTING CO., INC.

I am Larry Grossman, President of NBC News. I am pleased to appear before you today to testify about something else besides more money for public television. I hope I still feel that way at the end of this session, devoted to the issues raised in the Concurrent Resolution regarding election day news coverage.

As you may know, I have only recently joined NBC News. When I came on board, one of my first concerns was our position on election projections. That concern grew out of my own long term interest in the election process and my worry that the antagonism expressed by so many towards election projections may have been damaging NBC News' reputation. I initially felt that if our critics' arguments were correct and we were to change the NBC News policy on election projections, we could achieve a considerable advantage in the eyes of some during this presidential election year.

Along with my colleagues, therefore, I undertook a thorough review of the issues. We studied the current literature, past testimony and research data, including the Report of the Task Force on Elections to the Committee on House Administration. And I consulted with distinguished members of the academic community. NBC News has the benefit of an outstanding polling advisory board made up of some of the nation's best known social scientists who have long experience in election polling. As a result of all that study, I can tell you that I came to the somewhat regretful, but firmly held conclusion that there is no responsible or journalistically sound way to accomplish what the Concurrent Resolution seeks, namely to have "broadcasters and other members of the news media refrain from characterizing or projecting results of an election before all polls for the office have closed."

Let me first tell you what NBC News policy is. We report the trends on election day. We analyze the turnout. We cover what is happening. We report the results of elections on a state by state basis. But we do not name the winner of any election until all, or the overwhelming majority of the polls in a state have closed.

The fact is that when NBC News report a winner in a state's election, we are reporting what has already happened. We are telling people something we know to be true even though it may be before all the votes have been tabulated by state officials. We can do that because we collect a lot of information and we have learned to interpret that information accurately and quickly. NBC News' presidential projections are based on years of research that tracks exactly what has happened and what is happening in all parts of the political landscape. Our presidential projections have so far never been wrong.

The problem, as you know, is that thanks to the electoral college system and to the five-hour time zone differences spanning this country, today's communication capabilities make it possible, in a landslide election, to report the election of a president even before the polls have closed in many Western states. The consequence of these projections, according to the Concurrent Resolution, is to "undermine the belief of individuals in the importance of their votes," and thereby to discourage some people in the West from voting. It is argued that by reducing the vote the impact of presidential election projections could change the outcome of non-presidential contests.

We begin with the fact that the vast majority—almost 90 percent—of those who are registered to vote do indeed vote. And that is as true in the Western states as it

is in the rest of the country. Those who may decide not to vote because they've heard that the presidential race is over represent a very small handful of all those who have registered to vote, but who for one reason or another do not do so. Moreover, we have no way of knowing if people who decide to stay home because they've learned their presidential candidate has lost, outnumber those who stay home because they've learned their presidential candidate has won. In other words, common sense suggests that the effect of election projections probably falls equally on both sides.

Still, our critics argue that while the effect of early voting information may be very small, it can theoretically be decisive in determining the outcome of some congressional, gubernatorial or other races. To me, however, the key fact is this: those who do not bother to vote because they have learned that the presidential race already has been won, have also decided to forfeit their opportunity to vote on the rest of the ballot. That is a personal decision, made of their own free will, by people who do not care enough about the rest of the ballot to want their vote to count. Now, is it right to withhold or deny current election information to all the people in order to get a few to vote who otherwise may not choose to bother?

I know it is conventional wisdom that the larger the turnout the healthier our democratic system. But just getting people to vote is not enough. I would remind you that the biggest turnouts in history regularly take place in the Soviet Union. What counts, more than anything else, is not the total vote but an informed vote and an informed electorate. And that to me is the crux of the matter.

Under our electoral system, a presidential election can already have been decided while many states are still voting. In a landslide election, the presidential votes in some of our Western states actually may not make any difference to the outcome. Once 270 electoral votes are toted up, a presidential election is over, no matter how many state polls are still open for business. There is nothing we in the media can or should do about that fact. The fault lies not with the messenger who brings speedy election news. The fault (if fault there be) lies with the electoral college system, which provides for 51 separate presidential elections rather than one national election.

I feel strongly that it would be irresponsible, indeed, dangerously against the public interest for us to restrict, delay, withhold, or, yes, suppress information about elections, even if that were the popular thing to do.

Information about our elections is information about the most important and most fundamental news event in our democracy. We have a vast amount of law that says again and again, that when someone tells the truth, when someone reports the facts, no one can or should keep him or her from doing so. We have a few very narrow exceptions for news of significance to the public such as concern over disclosing national security information to the enemy. No one, certainly not this witness, would disagree with those exceptions. But we are far from that here.

In reality, there is no way in a free society that election result information can be held back. That information, like the wind, cannot be contained. It will get out one way or another. On election day too many people are already in the know. The politicians know the early trends. Campaign managers know how the turnout is going. Insiders are on top of the news. And the reporters have the facts. In this satellite and electronic age, even if the network's own newsmen are muzzled, concession speeches, victory speeches and political interviews would inevitably let the information out of the bag about where the election stands in Connecticut, Kentucky, New York or South Carolina. That information is of too much interest to too many to be sat on for hours waiting for the polls to close in California, Washington, Alaska or Hawaii. In the absence of news reports, information or misinformation about election trends would be spread in each campaign's own interest in the hope of influencing the vote in states where the polls remain open.

I do not see how the public interest can possibly be served in a situation where many know important information, or a piece of it, while the American people are being kept in the dark, presumably for their own good. To me that suggests improper manipulation of the voting public.

It is, I believe, a dangerous view that some of us should withhold information from the voters because that information may affect their behavior in ways that we do not like. Once we begin to interpose our own judgments on the consumers of news about the good or bad effects of what we report, there is no end to the potential for trouble and manipulation. Too many want us to withhold information because of their own notions of what is harmful. I believe that journalists should report the facts and not play God.

By withholding significant news, we leave the way open to outdated, incorrect or incomplete information. Ironically, newspapers and pollsters usually characterize

trends before the polls even open. It happened at this year's New Hampshire primary when many newspapers announced that Walter Mondale held the biggest national lead in history on the eve of the New Hampshire vote. That was a universally shared and widely publicized view which, one might think would serve to discourage voter turnout. But it became clear to many of us very early in the day, that all that information was dead wrong. Should we have sat on the information we had, based on the proposed voluntary policy of not characterizing what is happening in elections before the polls closed? If we did that, we would have let people continue to think, wrongly, that their vote would make little difference since a landslide was supposed to be inevitable.

Many have asked what benefit the reporting of election projections can possibly provide? It certainly is logical to think that early information about close presidential elections may indeed help to encourage voter turnout rather than to discourage it. When there is a close presidential race, timely reporting of the results in Connecticut, Kentucky and Rhode Island is a matter of importance to voters across the country. This information can be an incentive to help get out the vote in California, Washington and Oregon. Withholding this timely information could well achieve the opposite result from what the Concurrent Resolution seeks to achieve—namely to reduce turnout in close elections rather than increase it. Whatever the possible effect, as journalists we must keep in mind that our job is to report the news as it happens.

The First Amendment, encouraging the free flow of news, information and ideas, exists not for the benefit of the media or the journalist. It exists to protect the people and our democratic system. By urging that we not voluntarily withhold election news, I do not propose to wrap ourselves in the First Amendment in order to cover our own inadequacies or further our own selfish interests, but to serve the interest of the viewers and voters.

I believe that placing voluntary restrictions on our election coverage, such as the Concurrent Resolution suggests, especially when it contains such vague and ill-defined language as "characterizing" election results, would severely and fundamentally damage the public interest. It would be a terrible precedent.

I would like to make one final point. Dr. George Gallup's death last week reminded me of the early public outcry and congressional inquiries into what was once thought by some to be the reprehensible effects of the Gallup Poll on the nation's election process. For better or worse, election polling has become an established part of the process, and the Republic continues to survive. History suggests that the public will adjust and adapt to the new techniques and technology of election reporting far better than most experts now think. And I firmly believe that we'll all be far better off letting the public work this out for itself—if indeed there really is a problem—than to devise voluntary or involuntary ways of holding back or delaying information about the single most important and most fundamental process of our democratic society.

Thank you.

[The following information was subsequently received for the record:]

NATIONAL BROADCASTING CO., INC.,
New York, NY, September 12, 1984.

Hon. SLADE GORTON,
U.S. Senate, Committee on Commerce, Science and Transportation, Washington, DC.

DEAR SENATOR GORTON: On behalf of the National Broadcasting Company, I am pleased to respond to your thoughtful questions on the subject of our election night news coverage.

Question. Do not states have a legitimate interest in maintaining order around a polling place? Shouldn't a citizen's right to vote take precedence over your interest in gathering news?

Answer. It is well-settled that states have a legitimate interest in maintaining order around a polling place, and State legislatures have enacted legislation to assure that voters and the area around the polling place itself are protected from disruptive, distracting and unruly forces.

We believe that a citizen's right to vote and the right of the news media to gather news are not and should not be conflicting rights. The question of "precedence," in our view, need not and does not arise in connection with NBC's election day news-gathering activities.

NBC News' election day activities, including the taking of election day voter polls, do not interfere with any citizen's right or ability to enter a polling place and cast

their vote. Our polling personnel are clearly identified by a colored sash as being representatives of NBC news. They approach only those people who have already voted, as those people are leaving the area of the polling place. Those citizens we approach are clearly informed that they are being asked to participate in a voter survey for NBC News and they have every right and opportunity to decline. The questionnaire process itself is relatively brief, is completely voluntary and does not involve contact with prospective voters. Neither does it interfere nor hinder in anyway the ability of those citizens who have already cast their ballots to leave the polling place.

The gravamen of the criticisms against election day voter polling is not, in our view, based on concern for decorum, but rather concern over how information from these polls is disclosed in news broadcasts and newspaper reports.

Question. I understand that the League of Women Voters did a study of the 1982 election which showed that all three networks commented on the closeness of election or predicted results in states in which the polls were still open. How do you make these projections, if you do not use exit polling?

Answer. NBC's election night analysis of the progress or outcome of any particular election may utilize as many as four distinct types of reporting and information gathering processes. First, we engage in continuing year round research to detail what is happening across the political landscape. We track the offices being contested, who the likely candidates are and what the political trends are. As the primaries determine the official party nominees during the year, a clearer picture emerges of what actually may transpire on election night in November.

Our Election Unit notes such things as the issues that are raised in the campaigns, the public's response to them, the extent of the support of party loyalists and special interest groups, contributions to the candidates, past election results and other pertinent data. All this pre-election reporting and information gathering is available to and used by the election unit to interpret the other types of information which we gather and analyze on election day: key precinct vote result reports, computerized vote analysis of county by county vote totals and the results of election day voter polls.

These three tools—election day voter polls, key precinct vote and county vote totals together with our extensive pre-election reporting, can provide us with enough information to report what has happened in many races before actual vote totals are available. It is NBC News policy to report the trends and developments on election day.

In 1984 Presidential elections we will report election results on a state-by-state basis but we will not project the winner of a state contest until all or an overwhelming majority of the polls have officially closed in the state and actual votes have begun to be released by state election officials. In close races, typically no report of a projected winner can be made until significant actual vote return information is available.

Question. The Secretary of State of Washington reports that, after the 1980 election, his office was flooded with complaints from voters and from election workers that people left the polls after results were projected and that far fewer voters than were expected showed up. Assuming that election projections do keep voters away from the polls, how should we respond?

Answer. The Electoral College System, the 5-hour time zone differences and today's communication capabilities make possible the election of the President, and the reporting of that event, before the polls close in the West. In a landslide election, if virtually all of the electoral votes in Eastern, Southern and Midwestern states go to one candidate, those states can constitute an Electoral College majority and elect that candidate as President. In this circumstance, the electoral vote totals in Western states, even if they all go to a different candidate, would not effect the outcome. If this causes a problem, then we believe its soluton might best be sought through an examination of the Electoral College System or in programs of voter education designed to increase citizen awareness of the importance of voting on the other isues and offices on the ballot in each state besides the Presidential election.

Solutions which call for news media to refrain from reporting on events in Eastern states where polls have already closed, until hours later, after all polls across the country have closed are not in our judgment practical or sound. In the absence of updated news reports, information and possible misinformation about election trends would continue to flow from a variety of sources such as campaign headquarters, candidate speeches, political interviews, or even concession announcements. We do not believe that the public interest would be served by fostering a situation in which political insiders and others involved in the election process know important information about what is happening on election day while the American

public is subject to being misled, confused, or kept in ignorance because of a concern that some voters in the West may not choose to vote if they are told the outcome of separate state elections in the East, where voting has already concluded.

All concerned individuals should be satisfied that any proposed remedy is not worse than the problem itself. In this context, it should be noted that notwithstanding the reports referred to in your question, voter turnout among registered voters actually rose 2.5% in Washington State in 1980 over 1976, and also rose or stayed the same in 9 of the 13 states in the Pacific and Mountain time zones.

Question. I understand that a study by John E. Jackson of the University of Michigan concluded that election projections do have a definite detrimental effect on voter turnout. Can you comment on that?

Answer. The Jackson study has been the subject of scholarly debate. At the outset, it should be noted that the introduction to the Jackson study states that the results "should not be used to make any inferences about the national election and certainly not about local contests" and that the small number of respondents participating made "the reliability of our estimates comparable to the predictions of a Michigan meteorolgist who on a spring Monday predicts a sunny and warm weekend." Jackson also admitted that his poll did not constitute a random sample and that there was error in recall among his respondents of both time of vote and time of hearing election reports.

The importance of this warning has been supported by academic review of the study. For example, an article entitled "Survey Research and Election Night Projections" by Laurily Epstein and Gerald Strom, published in the February/March, 1984 issue of Public Opinion, disputes generalizations based on Jackson's findings. Laurily Epstein is a polling consultant to NBC News. The gist of the article is that the "magnitude" of media effects on would-be voters cannot be determined from Jackson's survey data.

Jackson contends that a combination of election night television news coverage and Carter's concession speech lowered overall turnout by 6 to 12 percent. Epstein and Strom, authors of the above referenced article, concluded that he compounded the normal error in the measurement of variables with additional errors in model estimation. They assert that what Jackson is estimating or what the true values of his parameters are remains unclear.

In order to further examine the validity of that part of the Jackson study which deals with the potential effect of hearing election reporting on non-voters, Epstein and Strom specifically examined the underlying data. Jackson reported that 1,814 people participated in the overall survey; however, the University of Michigan could furnish tapes of only 1,800 respondents. 1,047 respondents out of the original 1,800 had voted and were therefore excluded. Of the 574 which the study established as non-voters, 175 claimed to have voted when other information made it clear that in fact they had not. That left 399 who were asked why they had not voted. 143 said they never intended to vote. 45 said they decided not to vote on election day because of some reason having nothing to do with election day reporting, e.g., illness or the weather. Only four stated they didn't vote because they heard Carter had lost or was losing.

Epstein and Strom therefore concluded that the Jackson study really found that election reporting may have affected turnout by as little as 0.2 percent not six to twelve percent. Of course, given normal statistical margins of error a finding of a 0.2 percent effect can not be reasonably relied upon at all.

Thank you for this opportunity to share our views on these important questions with you.

Sincerely,

LARRY GROSSMAN.

The CHAIRMAN. Thank you.

Before you go on, Mr. Watson, let me also ask Mr. Joyce a question because Mr. Brown of the Democratic National Committee said CBS was the other network in the Iowa situation. You did not project any returns prior to 8 o'clock in Iowa?

Mr. JOYCE. No, Senator; we did not.

The CHAIRMAN. Mr. Watson?

STATEMENT OF GEORGE H. WATSON, JR., VICE PRESIDENT OF NEWS, ABC

Mr. WATSON. Thank you, Senator.

As the vice president of ABC News, my duties include responsibility for overseeing the policies and practices that govern our activities as journalists, and I have therefore been concerned with the controversy over projecting winners of elections and have carefully examined our practices in light of the various objections and criticisms that have been raised, and we welcome this further opportunity to explain what we do in reporting election results, and why we do it.

In this fashion, we can also place in proper context our views on House Concurrent Resolution 321.

Taking this year's Presidential primaries as an example, starting with New Hampshire in February and ending with California and New Jersey and other States in June, we accurately reported results of 18 contests. In no State did we project the winner until all polls were closed in that State. Once the polls were closed in a given State, we then projected a winner if we were able to do so, utilizing results from key precincts, available raw vote, and data from exit polls. On occasion this year we also reported trends or characterized developments in a particular race before all polls were closed in a given State, and we made a very clear distinction between reports which indicated trends in elections and the projection of winners.

Whenever we report trends or characterize a race in progress, our policy is to use highly qualified language and to report that polls are still open and ballots being cast. We do not believe that this kind of reporting adversely affects voter turnout or is a causative factor in the decision of citizens to vote or not to vote.

Let me now turn to the general election in November and briefly review how our basic policies will apply to it.

Because of the workings of the electoral college, the winner of the Presidential election is, of course, determined by results in each of the 50 States and the District of Columbia.

On November 6, ABC News will report on each of those 51 races. When the polls are closed in a particular State, we will proceed to project a winner in that State as quickly as we are able to do so. When one State's race has been won and the polls have been closed there, our news judgment tells us to report what has occurred as quickly as we are able, utilizing the best tools and techniques available. Under our system, the winner of the Presidential election is, of course, determined by who wins a majority of the electoral votes app ortioned among the States and the District. The winner is determined by simple arithmetic. Whoever amasses a total of 270 electoral votes is the next President. That is the way our system works and the way it has always been reported.

When a landslide Presidential election occurs, the winner will be determined in the East and reported to the Nation before everyone has necessarily voted in the West. We have heard many times since 1980 stories that some voters on the west coast deserted polling places after hearing of President Carter's concession and/or network reports of the Reagan landslide. But the actual evidence for that effect is anecdotal and, in our judgment, very inconclusive. The latest research analysis published in the journal Public Opinion, earlier this year, indicates that a statistically insignificant 0.2

of 1 percent of eligible voters say they were discouraged from voting in 1980 because of news coverage before the polls had closed.

If reporting is not the culprit, what then is responsible for the decline in voter turnout that has occurred over the past 20 years? In an effort to answer that question, the American broadcasting companies and Harvard University last September sponsored a major symposium in the Senate caucus room on American voting participation. It brought together leaders in politics, research, and journalism.

In his summary of its deliberations, Dr. Austin Ranney of the American Enterprise Institute concluded that the participants came to agree that the greatest single cause for our poor record is the fact that a much lower proportion of voting age citizens are registered to vote in America than in any other democratic country.

Obviously, people who are not registered do not vote, whatever news they hear.

On the other hand, citizens who are registered do vote in surprisingly high numbers. In 1980, 86.8 percent of registered voters went to the polls and cast their ballots in the Presidential election. If, however, different closing hours in various time zones are thought to be a problem, there is a solution which we believe merits serious consideration. That is a uniform, nationwide poll closing hour, at least for the continental United States. Simultaneous closing hours would make the projection issue moot.

The policy of ABC News is not to project the winner of any race until polls are closed in that State. If all polls across the country were closed at the same time, the early projection issue would be eliminated.

The CHAIRMAN. It does not bother you that the Chicago machine has the ballots an extra 12 hours?

Mr. WATSON. I am sorry, sir?

The CHAIRMAN. Never mind.

Senator EXON. That was a partisan question.

Mr. WATSON. In any case, we do not believe that swift and accurate reporting ought to be blamed for situations that result from the workings of the electoral college and the fact that the sun moves from east to west across five time zones.

In our opinion, House Concurrent Resolution 321 represents an intrusion by Government into matters of news coverage and editorial judgment, and we also believe it is unwarranted because we have in the past exercised restraint in reporting elections. We will continue to do so in the future. And we stand on a proud record of quick and accurate, reliable and responsible reporting.

Thank you.

[The statement follows:]

STATEMENT OF GEORGE WATSON, VICE PRESIDENT ABC NEWS

My name is George Watson. As a vice president of ABC News, my duties include responsibility for overseeing the policies and practices that govern our activities as journalists. I have therefore been concerned with the controversy over projecting winners of elections and have carefully examined our practices in light of various objections and criticism. This is the third occasion that I have testified on these matters before committees of Congress, and speaking for ABC News, we welcome this further opportunity to explain what we do when reporting election results, and

why we do it. In this fashion, we can also place in proper context our views on House Concurrent Resolution 321.

Taking this year's Presidential primaries as an example, starting with New Hampshire in February and ending with California, New Jersey and other states in June, we reported the results of 18 contests. In no state did we project the winner until all polls were closed in that state. Once the polls were closed in a state, we then projected a winner, if we were able to do so, utilizing results from key precincts, available raw vote and data from exit polls. We projected winners in each of the 18 Presidential primaries and our projections were accurate in every case. In caucus states, where the rules are more complicated and where voting is spread over many hours or even days, we reported on the vote as it was available and made 5 projections, all accurate.

On occasion this year, we also reported trends, or characterized developments in a particular race, before all polls were closed in a given state. We make a clear distinction between reports which indicate trends in elections and the projection of winners.

Even before the development of exit polls, such characterizations were often made utilizing factors such as turnout, weather, the private polls of politicians, the opinions of political pundits and other information. Whenever we report such trends, or characterize a race in progress, our policy is to use highly qualified language and to report that polls are still open and ballots being cast. We do not believe that this kind of reporting adversely affects voter turnout, or is a direct causative factor in the decision of citizens to vote, or not to vote.

Let me now turn to the general election in November and briefly review how our basic policies will apply to it. Because of the workings of the electoral college, the winner of the Presidential election is of course determined by results in each of the fifty states and the District of Columbia. On November 6, ABC News will report on each of those fifty-one races. When the polls are closed in a particular state, we will proceed to project a winner in that state as quickly as we are able to do so. In states where there is a landslide, we may be able to project the winner within minutes after the polls have closed. When one state's race has been run and the polls have closed there, our news judgment tells us to report what has occurred as quickly as possible, utilizing the best tools and techniques available.

A special case arises in states which have split poll-closing times. In 6 or 7 of those, where the late-closing polls involve remote and sparsely populated areas, we have sometimes projected winners after the vast majority of polls have closed. We have heard little, if any, complaint from those states and nothing to suggest that this is perceived as a problem.

Under our system, the winner of the Presidential election is, of course, determined by who wins a majority of electoral votes apportioned among the fifty states and the District of Columbia. The winner is determined by simple arithmetic—Whoever amasses a total of 270 electoral votes is the next President. That is true despite the fact that in some areas of the country the polls may still remain open and the outcome of those state races undetermined.

This is the way our system has always worked, and the way it has always been reported. When a landslide Presidential election occurs, the winner will be determined in the East and reported to the nation before everyone has voted in the West. It happened in 1964, when Lyndon Johnson's victory was known several hours before polls closed on the West Coast. It happened again in 1972, when Richard Nixon's defeat of Senator McGovern was known even earlier. And it, of course, happened yet again in 1980 when President Carter conceded his defeat two hours before polls were closed in some Western states.

We have heard many times since 1980 stories that some voters on the West Coast deserted polling places after hearing of President Carter's concession and/or network reports of the Reagan landslide. But the actual evidence of this effect on voting is thin, anecdotal and inconclusive. The latest research analysis, published in the journal Public Opinion earlier this year, indicates that a statistically insignificant .2 of 1% of the eligible voters may have been discouraged from voting in 1980 because of news coverage before the polls had closed. We have seen no clear or conclusive evidence that indicates that election night reporting adversely affects voter turnout.

If reporting is not the culprit, what then is responsible for the decline in voter turnout that has occurred over the past twenty years? In an effort to answer that question, the American Broadcasting Companies and Harvard University co-sponsored last September a major symposium on American voter participation. It brought together in the Senate Caucus Room a group of about fifty leaders in politics, academic research and journalism. In his summary of its deliberations, Dr.

Austin Ranney of the American Enterprise Institute wrote that the "participants came to agree that the gretest single cause for our poor record is the fact that a much lower proportion of voting-age citizens are registered to vote in America than in any other democratic country." Obviously, people who are not registered do not vote, whatever news they hear on election day. On the other hand, citizens who are registered do vote in surprisingly high numbers. In 1980, 86.8 percent of registered voters went to the polls and cast their ballots in the Presidential election. That is, in fact, a higher turnout than is customary in such other democracies as Britain, France, Switzerland and Japan. The studies of voting and non-voting conclusively show that the overwhelming proportion of Americans who are registered go on to cast their votes. The problem is that so many millions of Americans remain unregistered and therefore unable to cast their ballots on election day.

To blame exit polls, projections and election night reporting for the failure of so many Americans to register and vote is to confuse the messenger with the message. The message is that the overwhelming percentage of Americans who are registered go to the polls and cast their ballots. The problem is that so many Americans—some sixty million of voting age—remain unregistered and thus unable to vote.

While we believe registration to be the root of the non-voting problem, we do, of course, understand that much criticism has been leveled at the networks by pepole who say we ought not to report results until polls are closed all over the country. That is the substance of House Concurrent Resolution 321 calling on the news media to "voluntarily refrain from characterizing or projecting results of an election before all polls for the office have closed." In a Presidential election, presumably that would mean withholding what we know about the outcome for as long as six hours as the sun moves from the East Coast to the far shores of Alaska. That is not a reasonable proposal.

If, however, different closing hours in various time zones are thought to be a problem, there is a solution which we believe merits serious consideration. That is a uniform nationwide poll closing hour, at least for the continental United States. Uniform closing house, especially if coupled with 24-hour voting, might serve two desirable purposes. First, and most important, the ability of citizens to vote at any time during a twenty-four hour period would be likely to increase voter turnout by making it easier for shift workers and others to go to the polls.

Simultaneous closing hours would also make the projection issue moot. The policy of ABC News is not to project the winner of any race until polls are closed in that state. If all polls across the country closed at the same time, the early projection issue would be eliminated.

In any case, we do not believe that swift and accurate reporting ought to be blamed for situations that result from the workings of the electoral college and the fact that the sun moves from east to west across four time zones. In our opinion, House Concurrent Resolution 321 represents an unprecedented intrusion by government into matters of news coverage and editorial judgment. On constitutional grounds, we believe that is inappropriate and undesirable.

We also believe it is unwarranted. We have in the past exercised restraint in reporting election results. We will continue to do so in the future. We stand on our record of fast and accurate, reliable and responsible reporting.

[The following information was subsequently received for the record:]

QUESTIONS OF THE CHAIRMAN AND THE ANSWERS THERETO

Question. Do not states have a legitimate interest in maintaining order around a polling place? Shouldn't a citizen's right to vote take precedence over your interest in gathering news?

Answer. States do have a legitimate interest in maintaining order around polling places. However, there is no conflict between maintaining order around polling places and election day news gathering and polling. ABC News has in the past and will continue in the future to conduct itself around polling places in a manner which does not interfere with order and decorum.

The right to vote and the First Amendment right of the press are both constitutionally based. In our judgment, neither should take precedence over the other, and each should be construed with sufficient flexibility to accommodate the other. For example, the right to gather news does not sanction disruptive conduct at the polling place. Likewise, the right of the states to maintain order at the polling place should not be exercised so as to restrict non-disruptive news gathering activities.

Question. I understand that the League of Women Voters did a study of the 1982 election which showed that all three networks commented on the closeness of elections or predicted results in states in which the polls were still open. How do you make these projections, if you do not use exit polling?

Answer. Our long-standing policy has been not to project the outcome of an election in any state until the polls are closed in that state. The only exception arises in a handful of states which have split poll-closing times and where the late-closing polls involve remote and sparsely populated areas. In those few states, we have sometimes projected winners after the vast majority of polls have closed.

The League study also cited two instances in which ABC News declared the winner of "no-contest" Senate races three minutes before the polls had closed in 1982. The study itself conceded that these calls "could not have conceivably influenced the outcome of any races in those states. . . ."

Question. The Secretary of State of Washington reports that, after the 1980 election, his office was flooded with complaints from voters and from election workers that people left the polls after results were projected and that far fewer voters than were expected showed up. Assuming that election projections *do* keep voters away from the polls, how should we respond?

Answer. On the matter of voter complaints received by the Secretary of State of Washington, it should be noted that actual voting statistics suggest that news reporting had no measurable impact. In 1980, turnout actually increased in Washington State compared with 1976. In 1976, there was a close election and no projections of the winner until after Western polls had closed.

In 1980, a higher percentage cast ballots for President despite the landslide in the East which determined the outcome.

In our judgment the answer to voter apathy is voter education. In this election year, ABC has undertaken a company-wide public affairs effort to inform all Americans about the country's electoral process and encourage their participation in it. As part of that effort, the ABC-owned television and radio stations, "Good Morning America," ABC Children's television and other programs are all developing special segments to air between now and the election. In addition, an ongoing special advertising campaign features prominent political figures encouraging people to register and vote.

Question. I understand that a study by John E. Jackson of the University of Michigan concluded that election projections do have a definite detrimental effect on voter turnout. Can you comment on that?

Answer. The Jackson study has been widely criticized by political scientists as unreliable. Most recently, in a New York Times article analyzing the controversy surrounding election projections, James Barron said of the Jackson study: "Many researchers fault his methodology and conclusions, however, because his survey involved questioning a small sample of voters long after the election." [1] An analysis of the Jackson study published in the journal Public Opinion earlier this year points out that the Jackson study's conclusion that early projections had a detrimental effect on turnout in 1980 was based on four people who said they did not vote because they heard that President Carter had lost or was losing. [2] In our judgment the conclusions of the Jackson study are not warranted because of the flimsy and questionable data on which they were based.

The CHAIRMAN. Mr. Fraiberg.

STATEMENT OF LAWRENCE FRAIBERG, PRESIDENT, TELEVISION STATIONS, GROUP W, WESTINGHOUSE BROADCASTING & CABLE, INC.

Mr. FRAIBERG. My name is Larry Fraiberg. I am president of group W, Westinghouse Broadcasting and Cable, television stations division.

Mr. Chairman and the committee, I am very pleased to be here to discuss today's very important issue and subject.

In February of this year, Westinghouse Broadcasting and Cable announced that its television and radio stations would not release

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[1] James Barron "Issue and Debate—Are Restraints Needed on Election Day Polling?", The New York Times, September 13, 1984—page B-15.

[2] Laurily Epstein and Gerald Strom "Survey Research and Election Night Projections", Public Opinion, February/March 1984—page 48.

the results of exit polls until all the polls for that office were closed.

The CHAIRMAN. Do you mean in a State or do you mean nationwide?

Mr. FRAIBERG. Well, we mean wherever our stations are. We are not a network. We are individual stations.

Now, apropos of that, although we have this policy, we can only implement it if we get some assistance from the networks, because no one separates network from stations, and we cannot police or predetermine when we are going to get information from the networks.

The CHAIRMAN. Do you mean if you have a station in Ohio, it will not broadcast any Ohio results until the Ohio polls have closed?

Mr. FRAIBERG. Precisely. We are totally committed to the protection of the first amendment. We do not believe, however, that in this instance the first amendment must be jeopardized. We have only sought voluntary restraint on the part of the industry, and we have asked our colleagues to withhold making predictions until every American has had an opportunity to exercise his or her right to vote.

We believe that enough evidence has been put forth to prove that there is more than a casual relationship between exit poll predictions and voter turnout.

Every day journalists make judgment decisions that affect what they report without endangering the first amendment. We do not operate in a vacuum. The first amendment must be weighed against the needs and the rights of society. Yes; it is a judgment call, but we make them daily.

We voluntarily refrain from identifying women who have been raped and children who have been molested. We do it in the area of national security. And just as important as our national security is the integrity of our electoral process.

It is our responsibility to make these decisions in the public interest, and we cannot walk away from that responsibility when it is inconvenient. Some have claimed that even voluntary restraint of exit poll predictions is a suppression of the news. But as journalists, we are responsible for reporting the news, not making it.

Scooping a legitimate news story is good reporting, but guessing or predicting what the news will be is not good reporting, especially in this instance, when weighed against the negative impact it has on the electoral process.

Before making our decision on exit poll predictions, we took a close look at the impact these predictions were having on voter turnout in the western part of the country. Numerous studies and polls have been conducted, and while I have been debunked in the past for referring to them, I do believe their findings are worth considering.

A Los Angeles Times poll conducted from November 9 through 13, 1980, showed a 2.4-percent dropoff rate by those potential voters who heard the early predictions. And a survey conducted by CBS News and the New York Times from November 7 through 12, 1980, indicated that 3 percent of the registered voters give early projections as the reason they stayed away from the voting booth.

These statistics took on even greater importance when we looked at the closeness of several elections throughout the western portion of the United States. In 1980, Congressman Al Ullman lost by less than 1 percent. And Congressman Jim Corman lost by a half a percent. A California Assembly seat was decided by 0.028 percent that same year.

With these figures in mind, we can no longer ignore the potential impact of premature exit poll predictions. I have been in this industry for 35 years. And I consider it a privilege to be a broadcaster, but with that privilege comes responsibility, and I see no justification to offering viewers a disincentive to vote.

Mr. Chairman and members of the committee, Westinghouse Broadcasting and Cable supports the spirit of House Concurrent Resolution 321.

The CHAIRMAN. Mr. Fraiberg, there isn't much you can do with your stations if networks are making projections. I mean, you can't just monitor that carefully, say whoops and shut it off.

Mr. FRAIBERG. That's exactly right.

The CHAIRMAN. So the best you can do is what you can do locally, and you will not make any projections locally until the polls are closed. You do what you can.

Mr. FRAIBERG. Or try to persuade networks, and we are affiliated with all three of them, to the merit of this consideration.

The CHAIRMAN. Now, the networks are contending that they have not projected any results prior to poll closings. I think all three of you gentlemen said that, did you not? Does that comport, Mr. Fraiberg, with your understanding of what they are doing?

Mr. FRAIBERG. No; it does not. The poll closing where?

The CHAIRMAN. Well, the polls are closed in the east at 8 o'clock. Now, the three networks are saying they have not projected any results. They have not broadcast any results based upon some kind of exit polling or other information until the polls closed. What I asked is, does that differ from your understanding of what they have done?

Mr. FRAIBERG. Well, they may have waited until the polls closed in New York or in the East, but it still has the deleterious effect in the West.

The CHAIRMAN. Well, there we come to the argument about a uniform poll closing time and 24-hour voting, but I do not think many people have suggested that at 8:15 on the East when it is clear that New York has gone for Reagan or gone for Mondale, that you would withhold reporting that for as many hours as needed until the polls in Hawaii had closed.

I think most people say at that stage that is legitimate news. You can report that New York has gone for Reagan, or New York has gone for Mondale. But you are not quarreling with that, I take it.

Mr. FRAIBERG. No.

The CHAIRMAN. Now, let me turn to the networks, with just this word of advice. In my experience, Government only involves itself in placing controls on private enterprise when the public perceives that private enterprise is doing something wrong or unfair.

On other occasions, we have put controls on and the courts have said that is unconstitutional. If we were to put some kind of undue

restraint on you, you might go to court, and the court might find it violates the first amendment, but I hope we do not get to that stage. This only happens when the public perceives that what you are doing is wrong.

Right or wrong, they perceive it, and I think the public does think that you are projecting election results from very, very cursory information. That is again their perception. My hunch is that this is not cursory, that you spend a fair amount of money and a fair amount of time on that information.

But do you see anything wrong therefore, assuming you finally get exit polling down to a sufficient science, with projecting results at 2, 3, 4, 5 o'clock in the afternoon, so long as you are convinced that your exit polling was sufficiently accurate to make the projections, and you would project before the polls in the State had closed?

Mr. JOYCE. Speaking for CBS, I can really foresee no possible time in the future where we would vary from our current policy. I cannot imagine a time where we would actually call a race. And, Senator, in the interest of precision, I am not referring to a characterization here, but the call of a race, declaring an actual winner.

I cannot see a time where we would do that prior to the vast majority of the polls being closed in a given State.

The CHAIRMAN. No matter how accurate you thought your exit polling was?

Mr. JOYCE. We believe now our exit polls are very accurate. We have been working with them for almost 20 years, and I think, sir, that there is generally little debate about the accuracy of the exit polls.

The CHAIRMAN. As I recall the past primaries, that seems to be true. As you are well aware, there is hardly any information that is secret around here by 2 or 3 o'clock on election day, primary election days, from the different major States.

I had your inside reports on your election polls, and they were reasonably accurate. If that is the case, why not go ahead and broadcast them?

Mr. JOYCE. I think it is our belief that Yogi Berra has a point, quoting from an earlier witness today, that you declare a winner when the race in a given State is over.

I think the crux of the dilemma that we are all wrestling with and trying as good citizens to come up with an equitable answer here is when you have cast your vote as a resident of Massachusetts and your race is over, do you not have a right to know as speedily as possible, with all the modern technology available to a great network, do you not have a right to know what happened without waiting for 3, 4, or in the case of Alaska, 5 hours with that information embargoed?

It seems to me we have a situation where we have the societal conflicts of a 19th century set of poll closings and 20th century technology.

The CHAIRMAN. Let me ask you this question. Mr. Fraiberg referred to the fact that you do voluntarily restrain yourselves. He indicated that you do not report the names of women who are raped or victims of child abuse. You all by and large practice re-

straint in national security issues, even if we were not in a declared war.

The news media generally has been pretty good. How would the public interest on long-term policies of the Government be harmed if election reporting results were delayed 3, 4, 5 hours?

Mr. JOYCE. It seems to me on the basis of conjecture about possible impact, and there is a lot of talk about what studies have shown, I would submit to you there is not a single reliable study that shows adverse impact on voting patterns because of vote projections.

The CHAIRMAN. Well, I will put the question another way. If you withheld the results, how would the Nation suffer?

Mr. JOYCE. It seems to me, Senator, that the residents of a State, given the fact that nothing is more newsworthy, nothing I can think of more significant than the election of the President of this Nation, it seems to me, sir, that the residents of Massachusetts, of New Jersey are harmed. They have lost something very important.

I also do not think there is any way on Earth that information could be embargoed. You yourself had suggested that the political parties in the various States would certainly want to do exit polls of their own. I can see a welter of misinformation spreading about the country.

Before there is a tear in the membrane of a vital process, the process of the free flow of information as we have traditionally known it in this country, it seems to me that those who are recommending it would think very carefully about recommending, and on the basis of conjecture, that possibly some people are affected.

There is, sir, no knowledge that we can point to.

The CHAIRMAN. My time is up.

Jack?

Senator DANFORTH. I want to ask you a general philosophical question. The resolution that is before us, really has no teeth in it, and constitutionally it could have no teeth in it, and nobody wants it to have any teeth. It is simply a sense of the Congress resolution. Clearly, how the networks handle national events, and particularly political events, has an effect on the course of the country.

What the networks cover, how they cover it, the wording that is used, the inflections that are used by the commentator, it is clear to me, and I do not think anybody in politics would disagree, that that really does have an effect on what happens politically in this country.

All of us here have horror stories. Senator Hollings mentioned his Presidential campaign, and simply the difference in coverage between one candidate and another candidate—who gets on the evening news, and how you get on the evening news. That affects how a candidate behaves and what he says.

I recall during the last election that I was in one of those Conresses when a candidate tries to convince the voters that he really wants to win, and that he is trying hard and working hard to win. And the night before the election, one of the networks announced on the evening news that in Missouri Senator Danforth had taken his reelection so lightly that he had taken his family on a vacation to Europe the summer before the election.

It was wholly untrue. There was no foundation for it whatever. And yet it was reported. We complained about it, and complained, in fact, while the evening news was still going on. There was no retraction until the next night, less than an hour before the polls closed. And I came within 25,000 or so of losing the election.

And the general question—the philosophical question is this. Given the fact that there is no restraint on you, how do you function? How do you operate? How do you do your job responsibly other than just making a buck and hyping the ratings and trying to beat out the other guy for the audience?

How do you take your responsibilities and deal with them? There is no check. There is no balance. And, in fact, I suppose if the race is to the swift, the faster you are and the more colorful you are, the better your ratings are going to be.

There was a good column by Ed Yoder in the Washington Post some months ago about network news coverage and how there was a tendency to cover good TV things like lava flows and big, colorful camera events rather than the perhaps more ponderous events dealing with ideas and issues before the country.

And again, we cannot tell you what to do. Nobody can. But there is a wide perception that you can tell the country what to do. How do you deal with that?

Mr. WATSON. Senator, that is a very broad question, and I do not know that I could do more than briefly suggest a couple of things. Someone said that conscience is the small voice inside you that says someone is looking over your shoulder. We know that many people are watching us. We know that our credibility is everything that we have.

If we lose that, we have lost it all, and our reputation, our integrity as journalists is founded on the bedrock of attempting to get it right, and doing the best job that we can as responsible journalists. Certainly it does not mean that we do not make mistakes, and if we fail to correct them, that is inexcusable in the case that you cited.

But we also live and work in a highly competitive environment, and the fact that we are sitting together at this table this morning does not suggest in any way that we are not strenuous competitors among ourselves, and if one of us is doing something that should not be done, I think you can rest assured that one of these other fellows is going to be quick to point that out.

Mr. GROSSMAN. I think, Senator, as the newest member of this group, having just come to NBC news, it is clearly—that philosophical question has been very much on my mind, and we have discussed and debated endlessly that very issue, and I think the one thing that becomes very clear is that as journalists, one falls back to the north star of journalism, which is to report what is judged to be important to the Nation, to the people who are watching you, judged to be significant news, and certainly you report it when you know it, and you report what you know.

If you start worrying and getting involved in the social benefits or deficiencies of what you report, I think you step into areas of great potential mischief and difficulty, because there is much news that we would rather not report, and there is much news that people do not like to hear, and as I am suggesting with this resolu-

tion, there may be some negative consequences of restraining ourselves from reporting accurate results in a timely manner that will cause more mischief and more harm to this Nation and to the electoral process, and it will benefit the electoral process.

If I may just conclude my answer to that very thoughtful question, the chairman raised the perception issue, and I think it is a very important issue. If so many people are opposed or feel uncomfortable with what we are doing, why are we doing it? And I might suggest to you that we have examined this, as I have said in my statement, from the journalistic view, and we feel that there is no responsible way to do otherwise than to call when we know the facts.

Many years ago, and Dr. George Gallup's death last week reminded me of that, there was a similar perception that election polling itself, surveys were unduly influencing, had a negative or reprehensible influence on the outcome of elections and on the voting process, and this Congress conducted many hearings because the public was exercised on the effect of Gallup polls and other polls.

And the public has begun to—has absorbed that into their election system, I think, by now, for better or worse, and I would suggest to you that the new technologies have made us change the way we operate, and it is a far healthier way to allow the public itself to absorb and to adjust to these than to seek to pass laws or to have us restrain ourselves, which would have, we think, very dangerous consequences to the public and to the democratic system.

The CHAIRMAN. Let me interrupt, if I can, for a moment, because Senator Exon has to leave, and he has a question he wants to ask. Then, Jack, we will come back to this issue.

Jim?

Senator EXON. I thank you very much, Mr. Chairman.

Gentlemen, thanks for coming here. I guess we have all had our individual experiences, and I want to start out by saying that I have been in public life now for 14 years, and I have had very few, if any, difficulties with not being treated fairly by the press.

I will tell you, Mr. Watson, while you are here that the only exception to that since I have been in Washington was ABC, where one reporter obviously went way out of line to take a particular position that that reporter wanted to use, and totally misrepresented my position. That may have been a mistake, and I think ABC does a good job on the news, and I watch your station very frequently, and I think you do an overall good job. We are all going to get hurt from time to time by the process, and I simply want to associate myself with the remarks made by the Chairman in regard to perception.

There is a perception, whether it is right or wrong, that this has been harmful to the process, and the process is tremendously important, because I think it is a sacred process. In a democracy I think we obviously go to great ends to protect the sanctity and the sacredness and the fidelity of the voting booth by the fact that we do not allow results in a State to be announced until the polls have closed.

Mr. Grossman, I am not sure that I completely agree with what you said, though, that the projections based upon your professionalism help the process. It might be. I do not believe that the people pay a great deal of attention to individual polls by individual candidates or other polls with regard to how they vote, but I do think that if we have premature release of information from respected journalists, as you all are, I think that has an effect.

So, therefore I do not believe that the fact that the perception that Mondale had a big lead in New Hampshire had the desired effect of the Mondale campaign in New Hampshire.

Let me say that if you as an industry can stick to the commitment that has been made here that no results would be issued in a State before the polls closed, and that no exit poll results would be released in a State before the polls closed, then I suspect that we should not get into this any further as far as the Congress is concerned, because I think you all know I have been basically for deregulation of the broadcasting industry to allow you to compete, and I think by and large you do a very fair and excellent job.

I do feel, though, that in the back of that 1980 election the main difficulty and harm to the process on the west coast was not the networks, but President Carter. When the President of the United States said that he was defeated, it did not make any difference what you said. Well, just let me say that I do not believe that we here can set rules and regulations that say the polls are going to have to close at 5 o'clock in New York City so that we can time it with the west coast.

I suspect that we will not have Federal regulation, but only so long as you remain to be cooperative with each other, despite your fierce competition.

And I would simply say, Mr. Chairman, that I do not know what we should do about this resolution. I know it is a major concern among the people, and I suspect that the people expect us to do something here. I do not know what we can do here with the time zone situation that we have, and I have no questions of any of the panel, simply to say that the perception that the Chairman has alluded to is a real problem for us here, and it is more of a problem for you in the broadcast media.

Thank you very much.

The CHAIRMAN. Jim, thank you.

Now, Mr. Fraiberg, you may want to respond to Senator Danforth's question.

Mr. FRAIBERG. Well, I wanted to say that I agree with you. I think it is because of the pervasive power of television that we created this policy.

Mr. JOYCE. Senator Danforth, if I could respond, I do not think the Nation would tolerate rascals, and I think this is a very bright Nation, that would sense very quickly if we did not average out with a truthful, responsible, honest presentation of the information flow to the nation.

I think all three of us provide a very important service. We provide each evening the information base, if you will, for a Nation that is, after all, governed by consensus. I think they would very quickly detect that. Are we guilty of errors? Are we guilty of excesses?

And I say this not knowing if CBS news was the network you were describing. If we were, it sounds like we made an error. I would hope that that is the sort of an error that we would address.

There is a term in journalism, which is a craft, guilty of mistakes, called the truth unfolding, and I would like to think that over the process of days and weeks and months, that truth does unfold in our hands. It is our responsibility and our obligation, and I believe we take it very seriously.

I am sorry Senator Hollings is not here for me to remind him that CBS News and, I think, the other two networks did indeed keep a correspondent and a producer and a camera crew assigned to him for the duration of that primary. We did so because we believe with the change in the primary structure, the front loading of primaries, the shift in the nature of the conventions, that that was an important obligation for us, and we did that, and I can assure the Senator that he did appear on CBS News broadcast during that period.

The CHAIRMAN. I might say before Senator Pressler asks questions that my principal irritation with the press is not inaccuracy, but the fact that they quote me accurately about things I wish I hadn't said.

Larry?

Senator PRESSLER. Thank you very much.

I think that we have covered most of the questions, but I do have a question about the desire for high voter turnout. In particular, Mr. Watson made a good point when he said that real research indicates that this generally accepted theme that many people left the polling places when they heard that Carter had lost is not true.

And I have seen some statistical studies and some research, but I do not know how statistically accurate it can be. A lot of people, if you ask whether they voted in the last primary, will be inclined to say yes, because presumbly a good citizen says yes. Then you have to ask some more questions to sort out if they really did or did not, to try to get down to the truth.

But I think in this whole business we have a lot of unquestioned assumptions. For example, one that is accepted as logical is that some people would leave the polls if they heard that one candidate had won, but in fact I do not think that is the case, and studies have shown that is not the case.

Also, we have an assumption, I think, that the media is more powerful than it really is. I think our people really think things through. Certainly the media is very powerful, and television is, but I find a lot of skepticism amongst citizens about the news. The thoughtful citizens get their information from many different sources and sort of sift it out. If some medium starts being very biased, there actually seems to be a countereffect, at least in my State.

If one newspaper starts putting an angle on their news stories, it does not take long for citizens to figure it out. But there are instances, and I think Senator Danforth has cited one, in which problems do occur.

By the way, a minor footnote here. In 1978 CBS did project me the winner at 6:15, over national television and our polls closed at 8. Maybe you have changed your policy since then.

The CHAIRMAN. What did they base it on?

Senator PRESSLER. It must have been exit polls. I do not know. Remember, you called me a few minutes after that and congratulated me, and I said, I am not a winner yet. The polls are not closed. And your staff must have seen it. You were then the chairman of the senatorial committee, and you did a great job.

The CHAIRMAN. I am curious what they based it on.

Senator PRESSLER. I was not curious how you found out. It was about 6:20. You were right on the trigger.

Mr. JOYCE. What year was that?

Senator PRESSLER. 1978. Walter Cronkite, I believe, announced it at 6:15, and our polls closed at 8.

Mr. JOYCE. That is interesting. That would have been a period before we would have involved exit polls and the making of calls, incidentally.

Senator PRESSLER. I do not know how they did it, but they did it, and Senator Packwood called me.

The CHAIRMAN. I think basically, Larry, you were so far ahead in all the polls that were taken that we knew you were going to win.

Senator PRESSLER. It is really not very important. And I want to get down to a question for all of you. That is, it seems to be another generally accepted assumption, that a big voter turnout is good. I think a misinformed vote is dangerous. Just to have people vote, if they go into the voting booth and only vaguely know one or two names, that is a dangerous thing. That is almost like prescribing drugs without knowing anything about them, if we could compare politicians to drugs.

But the point is, why do we thank this way? You should not vote unless you are informed, and the ads should say, vote and be a good citizen, not the assumption that you can go and do the mechanical thing of voting. I think a misinformed vote is a very dangerous thing, and I think we should encourage people to completely inform themselves, not to go in and just pell-mell vote for people or vote for a party without much thought.

Now, usually there is a catch to all of the statistics from other countries. For example, there is a tax paid, or less tax paid, or some registration required if you go vote. In El Salvador I understand that you got your ID stamped when you voted, and a lot of people said they did not care if they voted or not. They wanted their ID stamped that they had voted.

And in many European countries, you actually get some small poll tax waived if you go register and vote. So there are lots of other reasons why people may go to vote.

So, if you really dig into many of these high turnout statistics they are really not such high turnouts. But I do not know why we have this mania for high turnout. The real issue should be, if you are informed, go vote, should it not?

Mr. GROSSMAN. Senator, I totally agree with you, and in my statement I point out that the highest voting statistics in current times exist in the Soviet Union.

The fact is that it is an informed vote that is important, and why that is important in this hearing and in this subject is that we are being asked in effect to trade off election information that reaches all the people in order presumably to encourage a very, very small

number who do not think sufficiently of the rest of the ballot to be willing to leave the line because they have heard perhaps that a President has been elected when in fact the President, by the way, has been elected.

And you wonder whether that tradeoff to induce those very few who do not think sufficiently of the rest of the ballot to have their vote count on those issues to protect their—or stimulate their vote, and thereby deprive all of the people of current information about what is going on in the election around the country, whether that is a responsible public service as this bill seeks to provide.

Mr. JOYCE. Senator, there have been voices going so far as to suggest that we could not even characterize during the course of the day the nature of the race. That could include anything from weather conditions to the voter turnout in the ethnic wards of Chicago, to the comments of political experts.

It would seem to me that as journalists, we ought not on election day to worry whether we are encouraging Republicans or Democrats to vote. Our obligation is very simply to bring the freshest reliable information to the electorate.

Mr. WATSON. Senator, I would just add one thing, and I abbreviated somewhat in my testimony. It is not well understood or it is misunderstood by many people. The fact is, we do have a surprisingly large turnout of registered voters in this country. Almost 9 out of 10 people who are registered go to the polls and vote. And that in fact is higher than Britain, France, Japan, many other major democracies.

The problem is that approximately 60 million people are not registered, and their commitment to the democratic process is obviously not strong enough for them to perform the basic act of registering that would allow them to vote. So, it seems to me that we are addressing a problem here that is miniscule when we are talking about the 1 out of 10 who does not vote, and perhaps the reasons why he does not vote, when the real problem is, why are so many people not registered?

Mr. FRAIBERG. I would like to be the dissenting commenter here. I think, first of all, I do not know whose opinion this is, but in determining who has an informed or uninformed opinion to vote, I do not think that is our democratic process at all.

Secondly, I think anything we do to create a disincentive is harmful to the thing which I think we should all very much cherish, which is this whole electoral process, and I do not think to sit here and talk about miniscule—I think if your own election was based on something less than 1 percent, and that 1 percent did not go to the polls, I wonder whether you would be sanguine about it. I know I would not be if I was a politician.

Senator PRESSLER. Well, just to conclude this, I think many people assume that the media has sort of a liberal bias. Some political scientists move that the groups really behind increased voter turnout are generally the more liberal groups. It is assumed that individuals at lower income levels will vote more if they are urged to do so. It is also generally assumed that the people who might vote more conservatively are already turning out. In conclusion I would just say that a high voter turnout without any regard for a well-informed electorate can be harmful to democracy

The CHAIRMAN. This would be anecdotal evidence. Twenty years ago, when I practiced law, I had a number of clients who were not registered, and I would run across others who were not registered. They were normally not dumb people. They were usually women, divorced, the sole support of their family, working. Because jury lists were drawn from registered voters, and they could not afford time off for jury duty, they would not register so they would not be drawn for jury duty.

Mr. WATSON. That is still thought to be a reason in the State of New York why people do not register.

The CHAIRMAN. Jack, any other questions?

Senator DANFORTH. No, thank you.

The CHAIRMAN. Larry, any others?

Well, let me ask one that Senator Gorton left for ABC. You maintain that you have a responsibility to report the news as it happens, and that it is wrong to wait until the polls close. Although that is not what you said, you do wait until the polls close. But his question is, why then did ABC not report the results of the Olympic games in Sarajevo as they occurred?

Mr. WATSON. We did, Senator. We reported the outcome of those games even though we were not broadcasting the event in its entirety until later in the evening, and on occasion our anchorman said, if you do not want to know the results, maybe you had better put some cotton in your ears, or go out of the room, because I am going to have to tell you what the hockey game score was.

And certainly our competitors were reporting the results of those matches. We did make a programming decision not to put the games on, certain events, until the audience, a larger audience was available later in the evening to watch them.

The CHAIRMAN. I will make sure he has that answer. The other four questions he left are more generic, and I will make sure they are sent to all of you.

Gentlemen, thank you very much.

The hearing is adjourned.

[Whereupon, at 12 p.m., the committee was adjourned, to reconvene at the call of the Chair.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

STATEMENT OF HON. DON EDWARDS, U.S. REPRESENTATIVE FROM CALIFORNIA

Today before you is H. Con. Res. 321, a resolution that offers a simple solution to a very complex and potentially costly problem: early election-day projections by the networks. I don't think we can sit by and idly allow the networks to continue their current election-day practices without inviting severe disruption to our 200-year-old electoral system.

With this in mind, the House last month overwhelmingly passed H. Con. Res. 321 which calls on the news media to voluntarily refrain from early election-day projections. From the House, we have sent a strong message to the networks because we feel that these early projections have had and will continue to have, an adverse impact on voter turnout. I feel it is very important that the Senate send the same strong message to the networks, especially before the Presidential election this November.

I feel that H. Con. Res. 321 addresses this matter of grave concern to all of us interested in and committed to maintaining the historical integrity of our electoral system.

Our country's 200-year history is distinguished by a much heralded and analyzed democracy. The single most important element in our form of government is our electoral system. On November 6, it is critical that every American be heard through his or her vote. All Americans have the right to cast their votes and make a personal and meaningful contribution to the democratic process.

There have been discussions recently regarding the devastating effects on voter turnout caused by early election-day projections and characterizations. Some of the debate centers on scientific studies and some anecdotal evidence. So far, the networks have refused to acknowledge the scientific studies and barely tolerate the anecdotes from local voters.

What we have here is a perceptual problem. Most House of Representatives Members, election officials, civic organizations and a significant number of western voters feel certain that the network projections are interfering with voter participation and directly affecting voting patterns. A 1982 University of Michigan study reports, "People's likelihood of voting is related to their perception of the value of their vote in determining the election's outcome. Events that alter that perception, alter turnout." The networks think otherwise. The networks' say that have offered a viable solution to the election projections' problem: national uniform poll closing. March Fong Eu, California's Secretary of State, has estimated that any significant change in California's election procedure would cost 3 million-taxpayers dollars. Voluntary restraint by the networks would not cost one cent, nor would it interfere with the networks' first amendment rights. Voluntary action by the networks would not prohibit the collection of exit poll data, nor would it prohibit the use of such data for after-the-fact analysis. It would not prohibit announcement of actual ballots counted when such counts become available.

It is important for a moment to look at this exit poll data the networks say they must report early in the day. Exit polls were designed by the networks to sample a small set of voters who, when added together, would represent the entire electorate. The networks have figured out that by determining how this sample voted, projections could be made of how the entire electorate might vote. This process has revolutionized how elections are reported and analyzed. Exit polling continues throughout the election day, so it is possible to call a race without waiting for an official poll closing. "It is possible before you get the raw vote, even one, to discover who won a race of any kind," says William Small, NBC News.

The networks assert that this exit poll data is hard news. I suggest that it is manufacturing of news, designed and controlled by the networks so that they have something to talk about during the long hours of an election day.

Today we are facing electoral disruption from this technological advance. Last month, the Washington State District Court upheld the right of the state to limit exit polling from within 300 feet of polling places. The defendants argued successful-

ly that "exit polling infringes upon the constitutional right to vote, it does so without any socially redeeming purposes serving the plaintiffs commercial ends." Twenty-two other states have either adopted similar laws or are applying existing electioneering statutes to regulate exit polls.

It is no longer possible to believe the networks when they say that their formal policy is not to make projections before the polls close in any given state. This policy is nothing more than empty rhetoric: not one of the networks have complied with it over the past primary and caucus season. We also have the experience of the 1980 and 1982 elections to show just how empty it is.

The networks view the Presidential election as one more marketable commodity. They have studied their ratings and have concluded that early calls on election day translate into high ratings. However as licensed users of the American people's airwaves, it is their responsibility to consider fully and fairly all the implications of early calls on election day. Election day in America is more, I suggest, than a network event entitled "The Selling of the Presidential Election".

The resolution before you today in no way impinges on the networks' freedom of speech. It asks for voluntary compliance. The American voter is entitled to an election day unencumbered by these projections.

Thank you.

STATEMENT OF HON. TIMOTHY E. WIRTH, U.S. REPRESENTATIVE FROM COLORADO

Chairman Packwood, I am pleased that the Senate is holding hearings on the extremely important issue of election projections made by television networks before the polls are closed. This issue goes to the heart of our electoral process as well as our democratic form of government.

The debate on early election projections involves two very compelling interests: our democracy's need to encourage voters to exercise their franchise, and the media's First Amendment right to report the news. These two goals need not conflict in any way.

The issue is not the First Amendment right of news gathering organizations to report votes cast in any election. I do not question their right to poll or analyze voting trends or results, whether in the form of a telephone survey, face-to-face interviews before or after a person has voted, or extrapolate limited statistical results from certain key precincts. Nor does the issue that this Committee is investigating today concern the accuracy or inaccuracy of network projections.

Rather, the issue is the civic responsibility of the electronic media and the implications that premature announcements or "characterizations" of election results have on the electoral process and thus on our citizens' rights under the same First Amendment guarantee.

Every citizen has civic responsibilities. And the networks, too, have a civic responsibility to report the news responsibly. However, that is quite different from the pell-mell rush to be the first to report election "results" that are not really election results. They are not raw vote tabulations. They are the results of sophisticated and highly accurate analysis of a tiny portion of the voter populations, based on exit polls or key precincts that have the potential of reducing the nation's electoral process to a computer exercise for hired statisticians. I do not want that. I do not believe the American public wants that. Such an exercise, I fully believe, has the potential of seriously compromising the democratic process.

The competition to be first, to create news, is an egregious interference in our electoral process. The broadcast media claim they are just reporting the news. On the other hand, exit polls, entrance polls and other techniques—opinions, not actual vote counts—are used to "create" news, then reported as though they were fact.

I think it is plain to see, based on the coverage to date of the 1984 Presidential primaries and caucuses, that the broadcast media regard election coverage as simply another form of entertainment in which they must be competitive. In fact, the day after the Iowa caucus, NBC issued a press release claiming that "NBC was the first network to declare Walter Mondale the winner." The release boasts that NBC News did this at 8:18 p.m. Central Time. Not only was this before the voting had finished, in this case, it was before the caucuses had even started.

Election projections before polls are closed do not inform the public—they discourage voters. The empirical evidence shows that. Early projections do not contribute in any positive way to our democratic form of government—indeed, they erode it. Voters are discouraged from participating in the electoral process when they are essentially told that their votes will not affect the outcome. Why should someone bother to go to a poll and cast a vote when the "conclusions" have already been

announced? Moreover, it interferes in the process of electing all our public officials from the President to Congress to statewide races right on down to critically important local offices.

The solution is simple. The networks and broadcast media should exercise voluntary restraint—restraint not from reporting actual votes cast—but rather, restraint from reporting or characterizing winners based on exit polls or other techniques, no matter how accurate, before the polls have closed.

In the House, Concurrent Resolution 321 was passed with overwhelming support by a vote of 351 to 64. The vote reflects Congress' belief that the networks should voluntarily refrain from projecting or characterizing election results before all the polls are closed in a state. This resolution merely asks the networks to refrain from this type of election coverage. It does not place the Congress in the position of a censor or editor of the news.

Broadcasters make a myriad of editorial judgments each day. Many of these judgments relate to how news coverage will affect the public interest. For example, stations will not broadcast the names of rape victims to protect their privacy, and even verifiable information that may affect a candidate for office will not be broadcast on election day. House Concurrent Resolution 321 merely urges the networks to realize the impact of their projections on the electoral process and to exercise the same responsible editorial judgment that is used in other areas of their news coverage.

Voluntary restraint until all polls are closed would hide no information, censor no fact, destroy no one's right to know. It would preserve and protect our most basic right that we as Americans have. If voluntary restraint cannot be viewed as a solution to this problem, the interests of 230 million Americans—to choose democratically a President—will be damaged.

The fact that Westinghouse Broadcasting and Turner Broadcasting have both gone on record as supporting voluntary restraint is evidence that no canon of journalism is being threatened or compromised by this measure.

Passage by the Senate of a resolution identical to House Concurrent Resolution 321 will not infringe on the First Amendment rights of broadcasters. It will send a clear signal to the networks that we consider the premature announcement of election projections and characterizations as detrimental to the election process.

I urge my colleagues to consider and adopt such a resolution prior to the elections in November.

STATEMENT OF HON. AL SWIFT, U.S. REPRESENTATIVE FROM WASHINGTON

Thank you for this opportunity to testify on H. Con. Res. 321, expressing the sense of Congress with respect to the adverse impact of early projections of election results by the news media.

The origin of this resolution, of course, stems from the network news projection of the winner of the presidential race in 1980 at 5:15 p.m. At that time, not only were there nearly three hours remaining before the polls were to close on the West Coast, but the polls were still open in approximately half the states, in every time zone. In addition to the hundreds of letters we have received from people in all the western states, the House Task Force on Elections that I chair has heard from many voters in states like Minnesota, Wisconsin and Alabama complaining that they heard the results before they had a chance to vote.

The announcement that the presidential race was over, as you know, was followed by widespread reports of thousands of voters either leaving the polls or never going to vote, firm in their belief that the election had been held and decided without them.

We had hoped that after all the public outcry—what David Broder referred to as "uproar in the West"—against the networks, they would reconsider their position and would refrain from making their projections in future elections.

Unfortunately, there was little indication either from the 1982 election, or from the primaries this year, that that is the case. As a result, the House passed this resolution by a vote of 352-65, seeking once again to persuade the networks to reexamine their position prior to the election this coming November.

During the course of the four years that the Task Force on Elections and the Subcommittee on Telecommunications have been working on this issue, we have studied the many aspects of the problem of early projections in some depth.

I will not attempt to address all those issues here. Other witnesses before the Committee have addressed some of them, and many of them are dealt with in the report of the Task Force on Elections, a copy of which is included with this statement.

But I would like, if I might, to highlight a few of the areas that I believe make the problem of early projections based on exit polls so difficult to deal with and that, at the same time, make such projections so necessary to prevent.

Those issues are: 1. How are exit poll results different from other polls taken prior to election day? 2. If exit polls are accurate, as most would concede that they are, then why should they not be used to project elections? 3. How are projections based on exit poll results different from projections based on actual election returns?

First, some have inquired, if we are going to suggest that the networks refrain from disseminating the data from their exit polls, then why not ask them not to announce polls taken on the eve of the election, or the day before that.

The answer is that exit poll data is different from the results of polls taken before election day because it is based on the reports of voters who have voted.

Despite the best efforts of pollsters conducting pre-election polls, they can never be sure that more than about 85 percent of poll respondents who say they are going to vote actually will do so. Furthermore, at least some of the individuals polled will change their minds between the time of the poll and the time they vote. As a result, a pre-election poll can never be as accurate as an exit poll.

For evidence of that fact, one need only look to the 1980 election, which generated the current controvery. Prior to election day, no respected poll that was publicly released indicated that the election would be other than a very tight race. Similarly, in New Hampshire this year, the pre-election polls indicated that Mondale would win by a wide margin. Yet in both instances, exit polls—based on interviews with those who had actually voted—revealed very quickly what the outcome of the election would be.

To quote the words of William Small, President of NBC News in 1980, when he testified before the Task Force: "Exit polling is based on what happened. There is a difference between a poll taken before an election in which you are asking for the anticipation of a vote, and exit polling, which is talking to voters after they have left the polling place. Then you are getting the actual account of what they did * * *"

There clearly is a difference between all other polls and exit polls; it is only the latter that concern us.

And that leads to the second point I wanted to address here, about the accuracy of exit polls. Because of the way exit polls are different, they are extraordinarily accurate in a way that no pre-election poll can ever hope to be.

But far from being a point in support of projections based on exit polls, that very accuracy is precisely why exit polls, and projections based on them, are so dangerous to our democratic system. People—voters—know the exit polls are accurate and so they believe a network when its anchor goes on the news and says that an election has been decided. People believe that the election is over and that their votes did not count.

In a great democracy such as we have, the belief that some votes count more than others, or that the outcome of an election can be determined before everyone has a chance to vote, is an extremely dangerous perception. It completely undermines people's faith in the validity of our government. But it is exactly that perception that is becoming increasingly wide-spread in this country.

Finally, exit poll data is different from actual election results. Unlike actual results, exit polling data are available early in the day and can be used to make projections—or what the networks now refer to as "characterizations"—well before any polls have closed anywhere.

Earlier this year on the day of the New York primary, for instance, network news announced that Walter Mondale "appears" to be winning "by a decisive margin" before any polls in the state were closed, and before any results were available. As the New York Times asked in an editorial the next morning: "Appears from what?"

The editorial went on to point out the fundamental problem we are concerned with here, which is: "On all three networks, the point was unmistakable: Sure, dear viewer, there are two hours of voting left, but never mind, things are all wrapped up."

Furthermore, even after the polls are closed, actual results are not immediately available for making projections. Election results take time to accumulate, and that naturally inhibits the ability of the networks to make projections. In 1980, for example, at 5:15 p.m. on election day, only 5% of the national vote had been tabulated. Even by 11:00 p.m. Eastern time, when the polls closed in California, only 42% of the national vote had been tabulated.

It is worth noting that, while NBC projected the presidential election using exit polls at 8:15 p.m. Eastern time, CBS, which was relying on actual results, was not

able to project the election until 10:32 Eastern time—more than two hours later, and much closer to the poll closing time in the West.

If the networks were to confine themselves to reporting the actual results—or, arguably, even to projecting based on actual results—they would have a legitimate argument that they were simply reporting the news. And that if that caused a problem, it was up to Congress to adopt a nationwide uniform poll closing time.

But the networks seem to feel that restricting themselves to reporting the news is not their role. Astonishingly, one network witness, in response to a question on this point, even said they could not confine themselves just to reporting results because results come in at different rates from different parts of the country and that would "mislead" the public. Can this really be a news person saying that the public cannot be trusted to be told the news as it happens?

The network position now seems to be that it is necessary to report election projections based on exit polls so that hearing reports of actual results does not confuse people with any doubt about who has won before they vote.

In closing, I would like to submit to this Committee the following points:

1. If projections were based exclusively on actual results—and if we believe projections while the polls are open are harmful, as I do—then it would be our responsibility to consider uniform poll closing times.

2. But, so long as projections are based on exit polls, no poll closing system we might devise could possibly prevent projections because the networks do not need any actual results in order to make their projections.

In short, the legislative solutions we can choose between are: (1) uniform poll closing times on the one hand—which cannot prevent projections based on exit poll data—and (2) outright restrictions on projections on the other—which run across the First Amendment.

We in the Congress have a choice between a meaningless solution and one that is possibly unconstitutional.

By far the best solution is for the networks to exercise voluntary restraint in their use of exit poll data to project election results. We are asking no more than that the networks exercise the simple good judgment about what to put on the air, and when, that each of them makes every day in every news decision.

It is not often that such a great good—preserving the integrity of our elections, and simultaneously avoiding a First Amendment confrontation—can be accomplished for so many at such a small price for so few.

I urge you to add your voices to ours—and to those of the American people, 78% of whom said in a recent poll (done by one of the networks) that they felt the networks should wait until the polls were closed everywhere before projecting the winner in presidential elections—in asking the networks not to make election projections before every citizen has had an opportunity to vote.

Thank you.

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